

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

MACA.No. 887 of 2007 (C)

AGAINST THE AWARD IN OPMV 1590/2002 of PRL.M.A.C.T.,KOZHIKODE
DATED 03-11-2006

APPELLANTS/PETITIONERS IN OP MV:

1. BIJI EDWARD, W/O.LATE SHEBI N MICHEAL,
AGED 27 YEARS, RESIDING AT NAMBIMADAM
KIZHAKKEPURA NILAM, PERUMANNA POST, POOVATTUPARAMBA
KOZHIKODE.

2. NEHA MARIA (MINOR), AGED 8 YEARS,
D.O.B.12-4-1999, LATE SHEBI N.MICHEAL, DO.
REP. BY 1ST APPELLANT.

3. N.JOSEPH MICHAEL, S/O.J.JOSEPH, AGED 57
YEARS, DO..DO.

4. MARIYAMMA MICHAEL, W/O.MICHEAL, AGED 52
YEARS, DO..DO.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT(S)/RESPONDENTS IN OP MV:

1. MOHAMMEDKUTTY.C.K.,CHERUKUNNATH HOUSE,
CHENNAMANGALLUR POST, MUKKAM, KOZHIKODE.

2. THE NATIONAL IINSURANCE COMPANY LTD.,
DIVISIONAL OFFICE, NOOR COMPLEX, MAVOOR ROAD
KOZHIKODE.

R,R2 BY ADV. SMT.SARAH SALVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 23-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

M.A.C.A No.887 of 2007

Dated this the 23rd day of January, 2015

JUDGMENT

Asha, J.

The appellants are the widow, minor child and parents of deceased Shebi N.Micheal, who met with an accident on 4.3.2002. He was riding a motorcycle when a bus hit him and knocked down. He had sustained very severe injuries and was taken to the Medical College Hospital, Kozhikode, where he succumbed to the injuries. The claim petition was filed seeking Rs.10 lakhs as compensation.

2. The Tribunal awarded a sum of Rs.3,07,000/- along with interest @ 6% per annum. The deceased was aged 27 years at the time of the accident and it was claimed that he was working as an Electrician and earning a sum of Rs.5,000/- per month. This appeal is filed seeking enhancement in compensation on the ground that the amounts awarded under almost all heads are throughly inadequate.

3. We heard the learned counsel appearing on either side. The learned counsel for the Insurance Company opposed the claim for enhancement.

4. The Tribunal has reckoned the income of the deceased as

Rs.2,000/- as against the claim of Rs.5,000/-. Considering the fact that the deceased was working as an Electrician and also considering the wage structure prevailing at the relevant time, we fix the income of the deceased at Rs.3,000/- per mensem. The apex court has in the judgment **Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd.** [(2011) 13 SCC 236] reckoned the monthly income of a coolie as Rs. 4500/- in respect of an accident which occurred in 2004. The deceased was aged 27. Therefore, the multiplier to be adopted is 17. As there were 3 dependents, ie. mother, wife and child, 1/3rd of the income has to be deducted towards personal expenses. The Tribunal awarded a sum of Rs.2,88,000/- towards loss of dependency. We recalculate the amount under this head adopting Rs.3,000/- as the monthly income and 17 as the multiplier, ie. Rs.3000X12X17X2/3, which will come to Rs.4,08,000/-. Towards funeral expenses, the Tribunal has awarded only a sum of Rs.2,000/-; towards loss of consortium, only a sum of Rs.10,000/- is awarded and no amount is awarded towards loss of love and affection. In the light of the judgment of the Apex Court in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89(S.C)], we award a sum of Rs.25,000/- towards funeral expenses, Rs.1 lakh towards loss of consortium to the widow and Rs.1 lakh towards loss of love and affection. Towards pain and sufferings, the Tribunal has awarded a sum of Rs.4,000/- only. We

enhance the same to Rs.10,000/-. The Tribunal has not awarded any amount towards loss of estate. We award a sum of Rs.35,000/- towards loss of estate.

5. Therefore the award passed by the Tribunal is modified as follows:

Sl.No.	Head of claim	Amt.
1	Loss of dependency (Rs.3000X12X17X2/3)	Rs. 4,08,000.00
2	Funeral expenses	Rs. 25,000.00
3	Transportation charges	Rs. 1,000.00
4	One day medical treatment	Rs. 1,000.00
5	Loss of consortium	Rs. 1,00,000.00
6	Pain and suffering	Rs. 10,000.00
7	Loss of estate	Rs. 35,000.00
8	Loss of love and affection	Rs. 1,00,000.00
	Total	Rs. 6,80,000.00

(Rupees Six lakhs eighty thousand only)

6. The appellants will be entitled to a total compensation of Rs.6,80,000/- (Rupees Six lakhs eighty thousand only) along with interest @ 9% per annum as per the decision of the Apex Court in **Supei Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513] from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and

on such deposit being made, the Tribunal shall disburse the compensation as follows:

“Out of the total compensation, Rs.3 lakhs along with interest shall be deposited in any nationalised bank in the name of the 2nd appellant- daughter till she attains majority. Another Rs.3 lakhs with interest will be disbursed to the 1st appellant, widow, and the remaining Rs.80,000/- with interest will be disbursed to the parents in equal proportions.”

The appeal is allowed accordingly. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge