

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

MACA.No. 908 of 2013 ()

AGAINST THE AWARD IN OPMV 328/2007 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, THALASSERY DATED 29-11-2011

APPELLANTS/PETITIONERS:

1. ISMAIL.M.P. S/O. YOUSEF,
AGED 58 YEARS
2. ASIYA.A.
D/O. ABDULLAKUTTY, AGED 50 YEARS
3. SAJINA.V.V.
D/O. MUSTHAFA AGED 24 YEARS

(ALL ARE RESIDING AT AZHIKODANTAGATH HOUSE
VARADOOR, .P.O., MUYYAM
KANNUR DISTRICT)

BY ADV. SRI.M.V.AMARESAN

RESPONDENT/RESPONDENT NO.2:

ORIENTAL INSURANCE COMPANY LIMITED
TALIPARAMBA, KANNUR-670001.

R1 BY ADV. SRI.VPK.PANICKER
R BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.908 of 2013

Dated this the 11th day of February 2015

JUDGMENT

Asha, J.,

The son of the appellants Nos. 1 & 2 and husband of 3rd appellant, succumbed to the injuries sustained in a motor vehicle accident occurred on 31.12.06 at 6 p.m. The deceased was working as Manager of U.F.O. Travels. It was claimed that he was earning a sum of Rs. 3,300/- per month. He was aged 26 years at the time of the accident. The claim petition was filed seeking enhancement of compensation. The Tribunal awarded a sum of Rs. 4,40,000/- along with interest at the rate of 7.5% p.a.

2. This appeal is filed seeking enhancement of compensation pointing out that the amount awarded under various heads are thoroughly inadequate.

3. We heard the learned counsel for the Insurance Company who opposed the claim for enhancement of compensation stating

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that the 3rd appellant has already re-married immediately after the death of her husband.

4. The Tribunal awarded a sum of Rs. 4,08,000/- under the head loss of dependency reckoning the income at the rate of Rs.3,000/- and adopted the multiplier as 17 and deducting 1/3 towards personal expenses. Learned counsel for the appellants submitted that the income reckoned by the Tribunal is too low and 50% of the same shall be taken as future prospects.

5. We find that the deceased was employed in a Private firm and as per Ext.A5 salary certificate, he was earning a sum of Rs. 3300/- per month. As the claim regarding monthly income was only Rs. 3,300/-, we will be justified in reckoning the income at the rate of Rs.3,300/- per month and we recalculate the compensation under the head of loss of dependency as Rs. $3,300 \times 12 \times 2/3 \times 17 =$ Rs.4,48,800/-. The Tribunal awarded a sum of Rs. 2,000/- towards the transportation expenses and Rs. 5,000/- towards funeral expenses. The amount awarded under the head of loss of love and affection is only Rs. 5,000/- and under the head of loss of consortium is only Rs. 10,000/-. In the light of the judgment of the Apex Court in Rajesh v. Rajbir Singh

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(2013 (3) KLT 89 (SC) , we award a sum of Rs. 25,000/- towards funeral expenses and Rs. 1 lakh towards loss of love and affection. Even though, a sum of Rs. 1 lakh is admissible to the widow under the head of loss of consortium, in view of the fact that she has remarried immediately after the accident, we award a sum of Rs. 50,000/- under this head. We enhance the amount awarded under the head of loss of estate from Rs. 5,000/- to Rs. 15,000/-. Similarly, the amount awarded under the head of pain and suffering is only Rs. 5,000/-. We enhance the same to Rs. 10,000/-.

6. Accordingly,we modify the award as follows:

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded (in Rs)</i>	<i>Amount modified (in Rs.)</i>
1	Transportation expenses	2000	2000
2	Pain and suffering	5000	10000
3	Loss of dependency income	408000	4,48,000
4	Loss of consortium	10000	50000
5	Loss of love and affection	5000	100000
6	Loss of estate	5000	15000
7	Funeral expenses	5000	25000
	Total	4,40,000	6,50,000

7. Thus the appellants will be entitled to a total compensation of Rs. Rs. 6,50,000/- which will carry interest at the

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rate of 9% on the enhanced amount from the date of petition, in the light of the judgment of the Apex court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513]. In view of the fact that the 3rd appellant has already got remarried, we direct that the compensation shall be shared among the appellants as 50% to the appellants 1 & 2 (parents) and remaining 50% to the 3rd appellant.

8. The Insurance Company is directed to deposit the entire amount, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment. Court fee if any, in deficit can be recovered by the Tribunal before disbursing the amount.

The appeal is allowed accordingly. The parties shall bear their respective costs.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge