

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

MACA.No. 814 of 2011 ()

AGAINST THE AWARD IN OPMV 3580/2004 of SPL.COURT FOR EC ACT CASES
&MACT,TSR DATED 31-12-2010
APPELLANT(S)/PETITIONERS:

1. MRS.SHINY,W/O.LATE DAVIS,AGED 38
YEARS, R/AT 'OLLUKKARAN HOUSE', KANNAPURAM
PULLAZHI, THRISSUR.

2. DENITTA,D/O.LATE DAVIS,AGED 14 YEARS,
MINOR REP.BY MOTHER AND GUARDIAN IST APPELLANT
MRS.SHINY, W/O.LATE DAVIS, R/AT 'OLLUKKARAN HOUSE'
KANNAPURAM, PULLAZHI, THRISSUR.

3. DENITHA,D/O.LATE DAVIS,AGED 11 YEARS,
MINOR REP.BY MOTHER AND GUARDIAN IST APPELLANT
MRS.SHINY, W/O.LATE DAVIS, R/AT 'OLLUKKARAN HOUSE'
KANNAPURAM, PULLAZHI, THRISSUR.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENT(S):

1. SIMON THOMAS,S/O.THOMAS,HOUSE NO.44/1722
DESHABHIMANI ROAD, KALoor, ERNAKULAM DISTRICT
682 017.(DELETED)

2. LAIJU.P.J.S/O.JOSEPH,PUTHIYAVEETIL
HOUSE, CHEMMANAGIRI, KULASEKHARAMANGALAM PO
VAIKOM, KOTTAYAM DISTRICT 686 608.

3. THE DIVISIONAL MANAGER,NATIONAL
INSURANCE COMPANY LTD., THRIpunITHURA DIVISION
ERNAKULAM DISTRICT, KERALA 682 301.

(NAME OF R1 DELETED AS PER ORDER I N IA 1116/2014 DT.2.4.2014)

R,R3 BY ADV. SMT.RAJI T.BHASKAR
R,R2 BY ADV. SMT.P.VIJAYAMMA
R,R2 BY ADV. SRI.P.J.ANILKUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.814 of 2011

Dated this the 12th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The claimants are the widow and two minor children of deceased late Shri Davis who died in a motor vehicle accident occurred on 4.10.2004. He was riding a scooter bearing Reg. No.KL-3/B 598 through Thrissur - Palakkad public road. The accident had occurred at about 8.45 p.m.. The offending vehicle is a tanker lorry bearing Reg. No.KL-7/AK/9727. Because of the injuries sustained, he was taken to Medical College Hospital, Thrissur wherein he succumbed to the injuries on the same day. He was aged 37 years and it was claimed that he was earning a sum of Rs.10,500/- per month.

2. The Tribunal considered the evidence of P.W.1, the proprietor of the Bus service by name "Balamuruga" in which the deceased was employed. According to him, the deceased was working since 2003 and was being paid Rs.350/- per day. It was also explained by him that

he was being employed 20 days per month. The employment of deceased under P.W.1 was not a disputed fact. The Tribunal rightly adopted Rs.4,500/- as the monthly income.

3. Learned counsel for the insurance company submitted that there is no documentary evidence to support the monthly income of the deceased.

4. We are of the view that in the light of the decision of the Apex Court in **Minu Rout and another v. Sathya Pradyumna Mohapatra and others** {2013 ACJ 2544}, paragraph 13, the monthly income of a driver can be taken as Rs.6,000/-. Therein, the Apex Court held that the Tribunal has got a statutory duty to fix fair and just compensation. It was further held that the Tribunal ought to have taken the salary of the deceased driver at Rs.6,000/- per month since the job of driver is a skilled job. Therein, the accident occurred in 2004 and therefore herein also, it will be safe to adopt the monthly income at Rs.6,000/- for the purpose of assessing compensation for loss of dependency. The Tribunal adopted the multiplier of 16. Going by the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010

(2) KLT 802 - SC), the correct multiplier will be 15 and we adopt the same. The Tribunal has awarded the compensation in the table given in paragraph 12. We find that towards transportation and funeral expenses, only a sum of Rs.5,000/- has been granted which we enhance to Rs.25,000/-. Towards pain and suffering, instead of Rs.6,000/- we grant an amount of Rs.10,000/-. Towards loss of consortium, we grant a sum of Rs.1 Lakh and towards loss of estate also we grant a sum of Rs.50,000/- instead of Rs.10,000/- granted by the Tribunal. Towards loss of love and affection, we grant a sum of Rs.1,50,000/- in total, as the claimants include two children who were minors.

The total compensation is accordingly modified as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Transportation & funeral expenses	5000	25000
Pain and suffering	6000	10000
Loss of consortium	10000	100000
Loss of estate	10000	50000
Loss of dependency	588800	720000
Loss of love & affection	10000	150000
Total		1055000

(Rupees Ten Lakhs and fiftyfive thousand only)

The enhanced amount will carry interest at the rate of 9% per annum and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months. The amount payable towards court fee for the total compensation will be recovered from the appellants from the amount deposited by the insurance company. We find that appellant No.3 is a minor even now. Therefore, the share of the minor as per the ratio specified by the Tribunal, will be deposited in a nationalised bank and we permit appellants 1 and 2 to withdraw the amount representing their shares.

The appeal is allowed as above. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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