

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

MACA.No. 1219 of 2013 ()

AGAINST THE AWARD IN OPMV 1789/2008 of ADDL.D.C.& MACT, PATHANAMTHITTA
DATED 01-04-2013

APPELLANT(S)/PETITIONERS:

1. VISWANATHAN NAIR,
S/O.GOPALA PILLAI, SALINI NIVAS, KAVUMBHAGOM.P.O
THIRUVALLA.

2. INDIRADEVI,
W/O.VISWANATHAN NAIR, SALINI NIVAS, KUVUMBHAGOM.P.O
THIRUVALLA.

BY ADVS.SRI.S.SUBHASH CHAND
SRI.SHINDO VARGHESE

RESPONDENT(S)/RESPONDENTS:

1. ANDREWS JACOB,
S/O.CHACKO, KUNNUMPURATH HOUSE, ASANPADI
CHINGAVANAM.P.O, KOTTAYAM DISTRICT.

2. MANAIGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION
THIRUVANANTHAPURAM-695001.

3. NEW INDIA ASSURANCE CO.LTD,
THAMBANUR, THIRUVANANTHAPURAM-695001.

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1219 of 2013

Dated this the 2nd day of March, 2015

JUDGMENT

Asha, J.

The parents of deceased Ajayakumar who met with a motor vehicle accident occurred on 13.8.2008, have filed this appeal seeking enhancement in compensation. The deceased was travelling through Thiruvalla - Mavelikkara public road when it was hit by a KSRTC bus causing severe injuries to him. He was immediately taken to Pushpagiri Medical College Hospital, Thiruvalla. He continued under treatment till 3.11.2008 when he succumbed to the injuries.

2. A claim petition was filed before the Tribunal seeking compensation to the tune of Rs.17 lakhs. It was claimed that the deceased was employed as Factory Manager in a company named Navoji Silk Company Uzbekistan, Russia and was drawing a monthly salary of Rs.40,000/-. Since the appellants were unable to prove the

salary of the deceased by producing a salary certificate, the Tribunal fixed the monthly income at Rs.7,000/-. A sum of Rs.8,58,180/- was awarded as the total compensation.

3. Learned counsel for the appellants submitted that the amount awarded by the Tribunal under various heads are thoroughly inadequate and the income reckoned is too low.

4. We heard learned counsel for the insurance company who opposed the claim for enhancement by pointing out that there is no evidence for the salary drawn by the deceased.

5. We find that the Tribunal has reckoned the monthly income at Rs.7,000/- and thereafter 50% of the same was added and then the average of Rs.10,500/- and Rs.7,000/- was taken and 50% was deducted for the purpose of assessing compensation under the head of loss of dependency. Since the fact that the deceased was employed in Russia has been proved, the income reckoned by the Tribunal at the rate of Rs.7,000/- and addition of 50% towards future prospects is only

reasonable, as against the claim of Rs.40,000/-. But we find that the method adopted by the Tribunal in taking the average of Rs.10,500/- and Rs.7,000/- after adding 50% towards future prospects is not correct. When 50% of the salary was added the income which should have been reckoned was Rs.10,500/- instead of Rs.8,750/-. Therefore, reckoning the monthly income at Rs.10,500/- after adding 50% towards future prospects, the loss of dependency will come to Rs.9,45,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards pain and suffering. It is seen that the appellant was in hospital for a period of 82 days due to the very serious injuries sustained. Having regard to the shock, pain and suffering during this period, we award a sum of Rs.50,000/- towards compensation for pain and suffering. The Tribunal has awarded only a sum of Rs.8,200/- towards bystander's expenses. The accident occurred in the year 2009. We enhance the compensation under this head to Rs.20,500/-, reckoning Rs.250/- per day. Towards compensation for love and affection, the Tribunal

awarded only a sum of Rs.30,000/- which we enhance to Rs.50,000/-.

The Tribunal has granted a sum of Rs.5,000/- towards loss of estate.

We enhance the same to Rs.50,000/-. We enhance the compensation

for funeral expenses to Rs.25,000/-, going by the decision of the Apex

Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 - SC)

Accordingly, the award passed by the Tribunal is 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>
Loss of dependency	262500	945000
Transport to hospital	1000	1000
Damage to clothing	1000	1000
Funeral expenses	10000	25000
Medical expenses	530480	530480
Bystander expenses	8200	20500
Pain and suffering	10000	50000
Loss of estate	5000	50000
Loss of love and affection	30000	50000
Total		1672980

(Rupees Sixteen lakhs seventy-two thousand nine hundred and eighty only)

The enhanced amount will carry interest at 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 appeal is allowed as above. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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