

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 MARCH 2015/21ST PHALGUNA, 1936

MACA.No. 1362 of 2013 ()

AGAINST THE AWARD IN OPMV 923/2009 of M.A.C.T.,PALA
DATED 06-02-2013

APPELLANT(S)/PETITIONERS 1 TO 4:

1. SUMA K.R.
W/O.LATE SOMU, KOORUMULLIL HOUSE
PUTHUPARAMBIL THEKKEKURUSUMALA, KUZHITHOLU(PO)
AR PRESENT RESIDING AT ANDUKUNNEL HOUSE, LALAM KARA
LALAM VILLAGE.

2. AISWARYA SOMU(MINOR),
D/O.LATE SOMU
REPRESENTED BY HER MOTHER AND NEXT FRIEND SUMA.K.R
W/O.LATE SOMU, KOORUMULLIL HOUSE
PUTHUPARAMBIL THEKKEKURUSUMALA, KUZHITHOLU(PO)
AT PRESENT RESIDING AT ANDUKUNNEL HOUSE, LALAM KARA
LALAM VILLAGE.

3. ASWIN SOMU(MINOR),
D/O.LATE SOMU
REPRESENTED BY HER MOTHER AND NEXT FRIEND SUMA.K.R
W/O.LATE SOMU, KOORUMULLIL HOUSE
PUTHUPARAMBIL THEKKEKURUSUMALA, KUZHITHOLU(PO)
AT PRESENT RESIDING AT ANDUKUNNEL HOUSE, LALAM KARA
LALAM VILLAGE.

4. BHARATHI,
W/O.P.K.RAGHAVAN, PUTHUPARAMBIL HOUSE
SANYASIYODA(PO).

BY ADVS.SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.K.B.ARUNKUMAR

RESPONDENT(S)/RESPONDENT NO.3:

DIVISIONAL MANAGER, ORIENTAL INSURANCE CO. LTD.
DIVISIONAL OFFICE, JYOTHI SUPER BAZAR, THODUPUZHA
KERALA, PIN-685 584.

R1 BY ADV. SRI.R.AJITH KUMAR VERMA (128/84)
R BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.1362 of 2013

Dated this the 12th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the widow, 2 children and mother of Shri Somu who died in an accident which occurred on 09.04.2009 at about 10.00 p.m. He was aged 42 years at the time of the accident. The accident occurred when he was walking on the side of Thookupalam-Puliyannamala public road and was knocked down by a jeep bearing Reg.No.KL-06/D-4899. He was admitted in the Amrita Hospital, Ernakulam and he succumbed to the injuries on 06.05.2009. He was working as a Mechanic under PW2 and it was claimed that he was earning a monthly income of Rs.12,000/- from his job as well as cardamom cultivation.

2. Heard both sides. It is submitted by the learned counsel for the appellant that the notional income arrived at Rs.4,500/- is inadequate. Ext.A14 receipt was produced to show that he had been conducting cardamom cultivation in a property

taken on lease. The widow was examined as PW1 and she had spoken to about the various aspects. The Tribunal did not accept Ext.A14. PW2 is the owner of the workshop who deposed that he was running the workshop for the last 13 years. Even though it was deposed by him that no muster roll or any other records were kept by him in the workshop to show the details with regard to the earnings of the deceased, Ext.A6 certificate issued by him shows that the deceased was earning Rs.9,000/- per month from him, but the Tribunal found that a notional income alone can be taken.

3. The accident occurred in the year 2005. Therefore we fix an amount of Rs.5,000/- as the monthly income of the deceased, which will be fair and reasonable considering the fact that he was a skilled labourer, namely a mechanic.

4. The compensation awarded by the Tribunal, going by para.11 of the award, is as follows:

<i>Sl.No.</i>	<i>Heads of claim</i>	<i>Amt.awarded</i>
1	Transport to hospital	Rs. 4,000.00
2	Damages to clothing and articles	Rs. 500.00
3	Extra nourishment	Rs. 1,000.00
4	Hospital expenses	Rs. 92,834.00
5	Funeral expenses	Rs. 5,000.00
6	Pain and suffering	Rs. 20,000.00

<i>Sl.No.</i>	<i>Heads of claim</i>	<i>Amt.awarded</i>
7	Loss of estate	Rs. 5,000.00
8	Loss of dependency	Rs.5,40,000.00
9	Loss of love and affection	Rs. 15,000.00
10	Loss of consortium to first petitioner	Rs. 10,000.00
	Total	Rs.6,93,334.00

5. The learned counsel for the appellant submits that for bystander's expenses, nothing has been granted by the Tribunal. We award an amount of Rs.6,750/- (ie. @ Rs.250/- for 25 days) towards the bystander's expenses. For funeral expenses, the Tribunal granted Rs.5,000/-, which we enhance to Rs.25,000/-. Towards pain and sufferings Rs.25,000/- has been granted by the Tribunal which we enhance to Rs.35,000/- in the light of the treatment undertaken by him and the seriousness of the injuries sustained by him. Towards loss of consortium only Rs.10,000/- has been granted and for loss of love and affection also only Rs.15,000/- has been granted and we enhance both these amounts to Rs.1 lakh each in the light of the decision reported in **Rajesh v. Rajbir Singh** [2013(3) KLT 89 (S.C)]. Towards loss of estate only Rs.5,000/- has been granted and we enhance the same to Rs.40,000/-. Compensation for loss of dependency will

have to be calculated taking 14 as the multiplier and by deducting $\frac{1}{4}^{\text{th}}$ for personal expenses and thus the amount will come to Rs.6,30,000/- (ie. Rs.5000X12X14X3/4). Thus the award passed by the Tribunal is modified as follows:

<i>Sl.No.</i>	<i>Heads of claim</i>	<i>Amt.awarded</i>
1	Transport to hospital	Rs. 4,000.00
2	Bystander's expenses	Rs. 6,750.00
3	Damages to clothing and articles	Rs. 500.00
4	Extra nourishment	Rs. 1,000.00
5	Hospital expenses	Rs. 92,834.00
6	Funeral expenses	Rs. 25,000.00
6	Pain and suffering	Rs. 35,000.00
7	Loss of estate	Rs. 40,000.00
8	Loss of dependency	Rs. 6,30,000.00
9	Loss of love and affection	Rs. 1,00,000.00
10	Loss of consortium to first petitioner	Rs. 1,00,000.00
	Total	Rs.10,35,084.00

(Rupees Ten lakhs thirty five thousand and eighty four only)

Thus, the appellant will be entitled to a total compensation of Rs.10,35,084/- (Rupees Ten lakhs thirty five thousand and eighty four only) and the enhanced amount will carry interest at the rate of 9% per annum from the date of petition. The Tribunal has awarded interest @ 7.5% per annum for the amount already

awarded. 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, appellants 1 and 4 can withdraw the amount earmarked for them and the amount allotted to the children shall be deposited in fixed deposits with any nationalised bank till they attain majority and on their attaining majority, they can withdraw the same.

The appeal is allowed accordingly. The parties will bear their respective costs in this appeal.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge