

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 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

MACA.No. 1584 of 2007 ()

AGAINST THE COMMON AWARD IN OPMV 2313/2001 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, PERUMBAVOOR DATED 28-02-2007

APPELLANTS/PETITIONERS:

1. SULOCHANA, W/O.DECEASED AYYAPPAN,
RESIDING AT KAVUNGAL HOUSE,
EDATHALA, ALUVA.
2. VIJU, S/O. DECEASED AYYAPPAN,
-DO- -DO-
3. BINU, D/O. DECEASED AYYAPPAN,
-DO- -DO-
4. BINDU, D/O. DECEASED AYYAPPAN,
-DO- -DO-

BY ADVS.SRI.GOPAKUMAR G. (ALUVA)
SMT.ANUPAMA JOHNY

RESPONDENTS/RESPONDENTS:

1. DEPUTY DIRECTOR OF KERALA HEALTH SERVICE
KERALA STATE HEALTH SERVICES, TRIVANDRUM.
2. SHRI. ASHRAF, S/O. IBRAHIMKUTTY,
KULIKADAVU, U.C.COLLEGE P.O., ALUVA.
3. M/S. UNITED INDIA INSURANCE COMPANY
LTD., DIVISIONAL OFFICE, P.B.NO.42
PUTHUSSERY COMPLEX, IIND FLOOR, GOVT.HOSPITAL JN.
ALUVA.

R,R3 BY ADV. SRI.A.A.MOHAMMED NAZIR
R, BY ADV. GOVERNMENT PLEADER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.1584 of 2007

Dated this the 1st day of April 2015

JUDGMENT

Asha, J.,

The appellants are the legal heirs of the deceased Sri. Ayyappan who died in a motor vehicle accident which occurred on 3.12.2001 at Salem. The deceased was accompanying a dead body of his relative from Chennai to Aluva in Ambulance van bearing Registration No. KL-01-1153 which was hit against a tree standing on the side of the road and he sustained very serious injuries. He succumbed to the injuries on the same day.

2. The claim petition was filed seeking compensation to the tune of Rs. 4 lakh. The Tribunal awarded a sum of Rs. 200900/-. This appeal is filed seeking enhancement of compensation, aggrieved by the inadequacy of compensation awarded by the Tribunal under various heads.

3. We heard the learned counsel for the appellants as well as the learned counsel for the Insurance Company.

4. Learned counsel for the Insurance Company vehemently opposed the claim for enhancement and pointed out that the M.A.C.A was dismissed for non-prosecution on 4.8.2009. Thereafter, the MJC filed for restoration of the appeal was dismissed for default on 20.8.2010. The MJC filed thereafter along with an application for condonation of delay, was allowed on 20.1.2015. Therefore, it was argued that the Insurance Company cannot be made liable for payment of interest during the said period.

5. The Tribunal has awarded a sum of Rs. 1,58,400/- towards loss of dependency. It was claimed that the deceased was a carpenter by profession and he was earning Rs. 4,000/- per month. The Tribunal reckoned his notional income at Rs. 1,800/- per month. The deceased was aged 50 at the time of the accident. Learned counsel for the appellants submitted that the income reckoned by the Tribunal is too low as far as a carpenter is concerned.

6. The Tribunal did not accept the income claimed by the appellants on the ground that there is no evidence for the same. However, in view of the wage structure prevailed in the year

M.A.C.A. No.1584 of 2007 :3:

2001, we find that a sum of Rs. 3,000/- can be taken as the monthly income of the deceased. Therefore, we re-fix the compensation, reckoning the income as Rs.3,000/- and adopting the multiplier of 13 which is admissible to a person aged 50 in accordance with the judgment of the Apex Court in ***Sarala Verma v. Delhi Transport Corporation [(2010)(2) KLT 802]*** and after deducting $\frac{1}{4}$ th towards personal expenses. Thus the compensation under the head of loss of dependency will come to Rs.3,51,000/- (Rs.3,000x12 x $\frac{3}{4}$ x13). The Tribunal has awarded a sum of Rs. 8,000/- towards transportation expenses. The compensation awarded by the Tribunal towards funeral expenses, love and affection, loss of consortium and loss of estate are Rs. 2,500/-, Rs.15,000/-, Rs. 10,000/- and Rs. 2,000/- respectively. In the light of the judgment of the Apex Court reported in *Rajesh v. Rajbir Singh* (2013 (3) KLT 89 (SC)) we enhance the compensation for funeral expenses to Rs. 25,000/-, towards loss of love and affection to Rs.1,00,000/-, towards loss of consortium to Rs.1,00,000/-. We enhance the amount towards loss of estate to Rs. 25,000/-. The award passed by the Tribunal is

M.A.C.A. No.1584 of 2007 :4:

modified accordingly as follows:

<i>Sl. No.</i>	<i>Heads of claim</i>	<i>Amt. Awarded</i>	<i>Amt.modified.</i>
1	Transportation	8000	8000
2	Funeral expenses	2500	25000
3	Pain and suffering	5000	5000
4	Love and affection	15000	100000
5	Loss of consortium	10000	100000
6	Loss of estate	2000	25000
7	Loss of dependency	158400	351000
	Total	200900	614000

7. Thus the total compensation will be Rs. 6,14,000/-. The enhanced compensation will carry interest at the rate of 9% p.a from the date of petition. The Insurance Company shall not be liable to pay interest for the period from 4.8.2009 - the date of dismissal of the M.A.C.A till 13.8.2010 the date of filing of the 2nd MJC.

8. The compensation awarded shall be shared among the appellants as 40% to the widow and 20% each to the children. The Insurance Company is directed to deposit the amount within a period of three months from the date of receipt of a copy of this judgment. The Tribunal can recover the deficit court fee if any,

M.A.C.A. No.1584 of 2007 :5:

from the amount to be deposited by the Insurance Company.

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

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

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

AL/-