

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR  
&  
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

MACA.No. 1067 of 2011 ( )  
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AGAINST THE AWARD IN OPMV 90/2008 of M.A.C.T., PERUMBAVOOR DATED  
21-02-2011

APPELLANTS/PETITIONERS:  
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1. SHINY, W/O DECEASED ANILKUMAR  
VISHARIKKAPARAMBU HOUSE, KOTTAPPURAM ALANGAD.

2. ANAGHA, AGED 4 YEARS,  
(D.O.B 22-7-96), D/O.ANILKUMAR -DO-

REPRESENTED BY MOTHER AND NATURAL GUARDIAN  
SHINY---DO--

3. VELAYUDHAN, S/O.KUNJA,  
VISHARIKKAPRAMBU HOUSE, KOTTAPPURAM, ALANGAD.

4. MALLIKA, W/O.VELAYUDHAN, -DO-

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

RESPONDENT/RESPONDENT:  
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NATIONAL INSURANCE CO. LTD.,  
DIVISIONAL OFFICE, URUMBATH BUILDING, PUMP JUNCTION  
R.S ROAD, ALUVA.

BY ADV. SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY  
HEARD ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

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

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**M.A.C.A.No.1067 OF 2011**  
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Dated this the 9<sup>th</sup> day of January, 2015

**JUDGMENT**

Asha, J.

The appellants are the widow, minor child and parents of deceased Anil Kumar, who met with an accident on 24.12.2007 and succumbed to the injuries on 1.1.2008. The deceased Anil Kumar was walking along the road when he was hit by a motor cycle. He was taken to the Ernakulam Medical Centre, Palarivattom and he underwent treatment there for the period from 24.12.2007 to 01.01.2008. He was working as a Welder and was aged 32 years. Claiming that he was earning a monthly income of ₹5,000/- and relying on Ext.A10 certificate issued from the Cochin Shipyard Ltd., the claim petition was filed seeking compensation to the tune of ₹9,85,000/-, which was limited to ₹6,50,000/-. The Tribunal has awarded a sum of ₹ 5,52,274/- reckoning his monthly income as ₹3,000/-.

2. This appeal is filed seeking enhancement of compensation

pointing out that the amounts awarded under various heads are inadequate. The learned counsel appearing for Insurance company supported the award of the Tribunal.

3. We find that the deceased was indisputably working as a Welder. The certificate Ext.A10 was produced to show that he was earning a sum of ₹5000/- per month. Going by the wage structure available at the relevant time and having regard to the fact that the deceased was a technically qualified hand, we find that the income claimed by the appellants i.e. ₹5,000/- was only reasonable and the Tribunal ought to have accepted the same. We therefore reckon his income as ₹5,000/- per month for the purpose of compensation. The compensation awarded towards funeral expenses is only ₹2,500/-. Similarly towards loss of consortium, a sum of ₹10,000/- alone is granted. Towards loss of love and affection also, ₹10,000/- alone is granted by the Tribunal. Going by the judgment of the Apex Court in **Rajesh v.Rajbir Singh ( 2013 (3) KLT 89 (SC)**, a sum of ₹ 25,000/- is admissible towards funeral expenses. The widow will be entitled to a sum of ₹1,00,000/- towards loss of consortium. The

deceased has left behind a minor child who lost the love and affection of his father. Therefore, a sum of ₹1,00,000/- is awarded towards loss of love and affection. The deceased was succumbed to the injuries after treatment as an inpatient for a period of seven days in the hospital. The Tribunal has awarded a sum of ₹10,000/- alone towards pain and suffering. Having regard to the very serious nature of the injuries which ultimately resulted in the death, we find it necessary to enhance the compensation under this head to ₹30,000/-. Similarly, towards loss of estate, the Tribunal has awarded only a sum of ₹2500/- which we enhance to ₹30,000/-. Towards loss of dependency, the appellants will be entitled to ₹7,20,000/- ( 5000 x 12 x 16 x  $\frac{3}{4}$ ).

4. Accordingly, the award is modified as follows :

| <i><b>Head of claim</b></i> | <i><b>Amount Awarded in Rupees</b></i> |
|-----------------------------|----------------------------------------|
| Transport to hospital       | 2500                                   |
| Damage to cloths etc.       | 250                                    |
| Funeral expenses            | 25000                                  |
| Attenance expenses          | 800                                    |
| Pain and suffering          | 30000                                  |
| Loss of estate              | 30000                                  |
| Loss of consortium          | 100000                                 |

| <i>Head of claim</i>       | <i>Amount Awarded in Rupees</i>                                                    |
|----------------------------|------------------------------------------------------------------------------------|
| Loss of dependency         | 720000                                                                             |
| Loss of love and affection | 100000                                                                             |
| Treatment expenses         | 81724                                                                              |
| Total                      | 1090274/-<br>Rounded off to 10,90,000/-<br>(Rupees ten lakhs ninety thousand only) |

5. The amount will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. The amount will be apportioned in the ratio as prescribed by the Tribunal. Before disbursing the enhanced compensation, the Tribunal shall collect the court fee towards the same.

The appeal is accordingly allowed.

**T.R.RAMACHANDRAN NAIR, JUDGE**

**P.V.ASHA, JUDGE**

SV.