

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 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

MACA.No. 1135 of 2011 ()

AGAINST THE AWARD IN OPMV 229/2006 of M.A.C.T.,PUNALUR
DATED 08-04-2011

APPELLANTS/PETITIONERS.:

1. MINI, W/O.LATE JOHN @ KUNJUMON,
ANCY BHAVAN, PERUNGALLOOR, AYOOR P.O.
KOLLAM.

2. ANCY JOHN, D/O.LATE JOHN @ KUNJUMON,
ANCY BHAVAN, PERUNGALLOOR, AYOOR P.O.
KOLLAM.

3. MINOR RINCY JOHN, AGED 12 YEARS,
D/O.LATE JOHN @ KUNJUMON, ANCY BHAVAN, PERUNGALLOOR
AYOOR P.O., KOLLAM.
(FIRST APPELLANT IS FILING THIS APPEAL FOR HERSELF
AND ON BEHALF OF 3RD APPELLANT WHO IS A MINOR, AS
THE GUARDIAN AND MOTHER)

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENT(S)/RESPONDENTS.:

1. BABU LUKOSE, S/O.LUKOSE,
NEDUMPARAYIL, PUTHEN VEEDU, KATTAYIL, VELIYAM
KOTTARAKKARA, KOLLAM DISTRICT-691 540.

2. BIJU M, S/O.MATHAI,
ALUMKADAVIL VEEDU, PARUTHIYARA, VELIYAM
KOLLAM DISTRICT-691 540.

3. THE DIVISIONAL MANAGER,NATIONAL
INSURANCE CO. LTD, KOLLAM-691 001.

4. FRANCIS MATHEW, VATTAKUZHIIYIL,
KALLORKKADU, MUVATTUPUZHA, ERNAKULAM DISTRICT-686 668.

R,R3 BY ADV. SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 16-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.1135 of 2011

Dated this the 16th day of February, 2015

JUDGMENT

Asha, J.

Widow and two children of the deceased John @ Kunjumon have come up in appeal seeking enhancement in compensation awarded by the Tribunal. The deceased was riding a motorcycle along with a pillion rider when he met with an accident on 24.05.2005 on being hit by a tipper lorry. The accident occurred near Jawahar High School Junction, while they were riding along Ayoor-Anchal road. Immediately thereupon the deceased was taken to Medical College Hospital, Thiruvananthapuram and he had succumbed to the injuries there.

2. The claim petition was filed seeking compensation to the tune of Rs.7 lakhs. It was claimed that the deceased was working as a brick kiln worker and he was earning a sum of Rs.6,000/- per mensem. The Tribunal awarded a total amount of Rs.4,85,000/- reckoning his income as Rs.4,000/-.

3. We heard the learned counsel on either side. The

learned counsel appearing for the Insurance Company opposed the claim for enhancement.

3. Before the Tribunal, appellants adduced documentary evidence by way of documents Exts.A1 to A12 and oral evidence by examining PW1 - the employer of the deceased, in order to prove the monthly income of the deceased. As per Ext.A6 certificate the employer certified that the deceased was earning a sum of Rs.6,000/- per mensem. The Tribunal has reckoned the income only at Rs.4,000/-. Having regard to the rate of wages prevailing at the relevant time and in the light of the judgment of the Supreme Court in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.** [(2011) 13 SCC 236], we are of the view that the income of the deceased can be reckoned @ Rs.5,000/- per mensem. Hence the loss of dependency will come to $\text{Rs.}5000 \times 12 \times 14 \times \frac{2}{3} = \text{Rs.}5,60,000/-$.

4. The Tribunal has awarded only a sum of Rs.10,000/- towards loss of consortium, Rs.7,500/- towards loss of love and affection and Rs.5,000/- towards transportation and funeral expenses together. In the light of the judgment of the Supreme Court in **Rajesh v. Rajbir Singh** [2013(3) KLT 89(SC)], we award a sum of Rs.25,000/- towards funeral expenses,

Rs.1,00,000/- towards loss of consortium and Rs.1,50,000/- towards loss of love and affection as there are two minor children. Since the accident occurred at Ayoor and he was taken to the Medical College Hospital, Thiruvananthapuram, we award a sum of Rs.5,000/- towards transportation expenses. The Tribunal has not awarded any amount towards pain and suffering. Therefore we award a sum of Rs.10,000/- under this head. Similarly under the head 'loss of estate' , we award an amount of Rs.30,000/-. Accordingly the award passed by the Tribunal is modified as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Transportation	Rs. 5,000.00
2	Funeral expenses	Rs. 25,000.00
3	Loss of consortium	Rs.1,00,000.00
4	Loss of love and affection (2 minors)	Rs.1,50,000.00
5	Pain and suffering	Rs. 10,000.00
6	Loss of estate	Rs. 30,000.00
7	Loss of dependency	Rs.5,60,000.00
	TOTAL	Rs.8,80,000.00

(Rupees Eight lakhs eighty thousand only)

The appellants will be entitled to a total compensation of Rs.8,80,000/-. The enhanced amount will carry interest @ 9% per annum from the date of petition. The Insurance Company is

given 3 months' time to deposit the amount.

4. The compensation shall be apportioned among the appellants as 40% to the widow and 30% each to the children. As the children have become major, we allow the appellants to withdraw their respective shares, as and when the deposit is made.

5. The Court Fee in deficit towards the total awarded amount shall be recovered by the Tribunal before disbursement.

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

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge