

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 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

MACA.No. 1160 of 2011 ()

AGAINST THE AWARD IN OPMV 276/2004 ON THE FILE LOF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, KALPETTA DATED 19-12-2008

APPELLANTS/PETITIONERS:

1. JOSE.T.C, AGED 61 YEARS,
S/O. CHACKO, THALACHIRA HOUSE, OZHUKKANMOOLA
KATTAYAD POST, PIN- 670731

2. LILLY @ THRESSIA,
AGED 57 YEARS, W/O. JOSE, THALACHIRA HOUSE
OZHUKKANMOOLA, KATTAYAD POST.- 670731

3. REJI, AGED 36 YEARS,
S/O. JOSE, THALACHIRA HOUSE, OZHUKKANMOOLA
KATTAYADI POST - 670731.

4. TREJEESH, AGED 32 YEARS,
S/O. JOSE, THALACHIRA HOUSE, OZHUKKANMOOLA
KATTAYAD POST.- 680731

BY ADV. SMT.CELINE JOSEPH

RESPONDENT/RESPONDENT NO.3:

THE BRNCH MANAGER,
UNITED INDIA INSURANCE CO. LTD., BRANCH OFFICE
RAWTHER BUILDNG, NEAR PINANGODE ROAD JUNCTION
MAIN ROAD, KALPETTA, WAYANAD DISTRCT
INSURE OF KL 12 A 1022 AUTO RICKSHAW

R BY ADV. SRI.P.SANKARANKUTTY NAIR

R1 BY ADV. SRI SANDESH RAJA (BY ORDER, NO MEMO)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.1160 of 2011

Dated this the 9th day of February 2015

JUDGMENT

Asha, J.,

Appellants are the claimants and siblings of the deceased Trency who met with an accident on 9.2.2004 while travelling as a pillion rider in a motor cycle bearing registration No. KL-12B/6704. The motor cycle hit against the autorikshaw and was capsized. The deceased Trency sustained very severe injuries and was taken to District Hospital, Mananthavady and thereafter to Medical college Hospital, Calicut. She succumbed to the injuries on 16.2.2004.

2. The claim petition was filed seeking compensation to the tune of Rs.5 lakhs. The Tribunal awarded a sum of Rs.3,36,400/-. It was claimed that the deceased was working in various Co-operative Societies as clerk on daily wages and by order dated 29.1.2004, she was appointed as Junior Clerk in

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Kerala Malanad Karshaka Produce Co-operative Marketting Society Ltd., on a consolidated salary of Rs. 3,000/-per month for a period of one year on probation. It was stated that she was regularised in the scale of pay of Rs. 2610-60-3150-60-3540-70-3680 on completion of probation period of one year. It is pointed out that the accident occurred just before she was to join duty. At the same time, it is pointed out that she had been working in the post of clerk on daily wages in the Thondernad Service Co-op. Bank for the period from 4.1.2002 to 20.9.2002, In Padinharathara Service Co-operative Bank Ltd., for the period from July 2003 to September 2003. She was a member in the Wayanad District Flory Culture Society and was engaged in cultivation and sale of anthurium flowers. The Tribunal assessed compensation reckoning her monthly income at the rate of Rs. 2,100/-. A sum of Rs. 16,800/- was awarded towards loss of dependency.

3. Learned counsel for the appellant submitted that the income reckoned is too low and the amount of compensation awarded under various heads are throughly inadequate. Learned

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counsel for the Insurance Company opposed the claim for enhancement. From Exts.A5 to Ext.A10, it is seen that the deceased had been working as a clerk initially on daily wages and appointed on regular basis on probation. Apart from that she had been a member of the Wayanad District Flory Culture Society, Agriculture wholesale Market, S.Bathery engaged in cultivation and sale of flowers. In view of these circumstances, we find it just to fix that the income at the rate of Rs.4,000/- per month. Thus the loss of dependency will be Rs. $4000 \times 2 \times 17 \times \frac{1}{2} =$ Rs. 4,08,000/-. Since, the deceased was aged 27, proper multiplier is 17. Since she was a spinster, 50% of the income is to be deducted towards her personal expenses.

4. It is seen that the deceased succumbed to the injuries after hospitalisation for a period from 9.2.2004 to 16.2.2004. The Tribunal has not awarded any amount towards pain and suffering. Therefore, we award a sum of Rs. 30,000/- towards pain and suffering. Towards funeral expenses and for love and affection the Tribunal has granted only a sum of Rs. 3,000/- and Rs.30,000/- respectively. In the light of the judgment of the

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Apex Court reported in Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC) , we award a sum of Rs.25,000/- towards funeral expenses and Rs. 1 lakh for loss of love and affection. The Tribunal has not awarded any amount for medical expenses. Having regard to the fact that the deceased was under hospitalisation for a period from 9.2.2004 to 16.2.2004 due to head injury, we award a sum of Rs. 5,000/- towards medical expenses and for loss of estate, we award an amount of Rs. 30,000/-. The accident occurred at Mananthavadi. Deceased was taken to Medical College Hospital, Kozhikode. Tribunal has awarded only Rs. 1,000/- towards transportation expense. We find it just to enhance the same to Rs. 2,500/-. Thus the award passed by the Tribunal is modified as follows:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded (in Rs.)</i>	<i>Amount modified (in Rs.)</i>
1	Transport to hospital	1000	2500
2	Funeral expenses	3000	25000
3	Love and affection	30000	100000
4	Dependency	3,02,400	408000(Rs.4000x12x17x1/2)
5	Medical expenses		5000
6	Loss of estate		30000
7	Pain and suffering	-	30000
	Total	336400	6,00,500/-

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5. Thus the appellant will be entitled to a total compensation of Rs. 6,00,500/-. The enhanced amount will carry interest at the rate of 9% p.a. in the light of the decision reported in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513]. The Insurance Company is directed to deposit the amount within a period of three months. The appeal is allowed accordingly. Parties will bear their respective costs.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-

P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge

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