

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 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

MACA.No. 1212 of 2011 ()

AGAINST THE AWARD IN OPMV 1383/2003 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA DATED 24-05-2008

APPELLANT/2ND PETITIONER:

LAILA BEEVI, W/O. LATE MOHAMMEDKUTTY
RESIDING AT THARAYIL HOUSE, NEAR MOHADEEN MOSQUE
KAYAMKULAM.P.O., ALLEPPEY DISTRICT.

BY ADVS. SRI.T.C.SURESH MENON
 SRI.JIBU P THOMAS
 SRI.P.S.APPU
 SRI.A.R.NIMOD
 SRI.C.A.ANOOP

RESPONDENTS/RESPONDENTS:

1. SHIHABUDHEEN, S/O. KUNJU MOHAMMED,
RESIDING AT KURIKKAL VEETIL, EDAPPALLA, AKKARAPPURAM
THUVOOR VILLAGE, MALAPPURAM DISTRICT.

2. M.AHAMMEDKUTTY HAJI, RESIDING AT
MALIYEKKAL HOUSE, MANAGING PARTNER, FEROKE
PETROLEUM AGENCY, P.O.VENGARA, MALAPPURAM DISTRICT

3. THE NEW INDIA ASSURANCE CO.LTD.,
MANJERY ROAD, MALAPPURAM.

R3 BY ADV. SMT.A.SREEKALA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.1212 of 2011

Dated this the 19th day of March 2015

JUDGMENT

Ramachandran Nair , J.,

Aggrieved by the inadequacy of the compensation the appellants have come up in appeal against the award of the Tribunal in O.P. (MV) No. 1383/2003 on the file of the Motor Accidents Claims Tribunal, Irinjalakkuda. The appellant is the mother of the deceased Abdul Rahim, and he was unmarried. As compensation, the Tribunal has awarded Rs. 1,40,000/- with 7% interest.

2. Heard both sides.

3. The accident occurred on 7.3.2003. Learned counsel for the appellant submitted that the Tribunal has fixed Rs.2,500/- as his monthly income even though, evidence was given to show that he was a Ayurvedic Physician. He seeks support from the entries in the FIR. Learned counsel for the respondent

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submitted that the above plea was not accepted by the Tribunal as there was no proof in support of the profession of the deceased.

4. We find from paragraph 8 of the judgment that the Tribunal did not accept the case in that regard and fixed the monthly income notionally at Rs. 2500/-.

5. The deceased was aged 28 at the time of the accident. The accident occurred in the year 2003. Even for persons engaged in manual labour, their income can be easily fixed at least Rs.4,000/- in the year 2003. Here evidence is not there showing the profession of the deceased. Therefore, since the accident occurred is at the young age of 28, we fix Rs. 4000/- as notional income for arriving at a just compensation irrespective of the profession of the deceased.

6. The Tribunal committed another error in adopting the multiplier based on the age of the parents.

7. Going by the judgment in **Sarla Verma v. Delhi Transport Corporation [2010(2) KLT 802 (SC)]**, the age of the deceased is the relevant one. Therefore, the multiplier will

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be 17. Accordingly, the dependency compensation will be Rs.4000x12x17x1/2= 4,08,000/-.

8. The Tribunal has granted Rs. 5,000/- for pain and suffering. Another amount of Rs.5,000/- was granted for funeral expenses and Rs. 10,000/- for loss of love and affection.

9. Even though, learned counsel for the Insurance company submitted that the amount awarded is just, we cannot agree.

10. As far as pain and suffering is concerned, we grant an amount of Rs. 10,000/- even though, the death occurred on the same day, as he suffered very serious injuries. For funeral expenses we grant an amount of Rs. 25,000/- ; Rs. 1 lakh is granted for loss of love and affection towards the mother who is the appellant herein. We grant another amount of Rs. 20,000/- towards loss of estate. Accordingly, we modify the award as follows:

Sl.No.	Heads	Amt.awarded	Amt.modified
1	Loss of dependency	120000	408000
2	Pain and suffering	5000	10000
3	Funeral expenses	5000	25000
4	Loss of love and affection	10000	100000
5	Loss of estate	-	20000
	Total	140000	563000

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11. Thus the total compensation will be Rs.5,63,000/-. The enhanced compensation will carry interest at the rate of 9% p.a from the date of petition.

12. The Insurance company is directed to deposit the amount less the amount already deposited within a period of three months. We direct the Tribunal to release the amount to the appellant herein.

Accordingly, the appeal is allowed. The parties will suffer their costs in this appeal.

Sd/-

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

**Sd/-
P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge

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