

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 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

MACA.No. 1332 of 2011 ()

AGAINST THE AWARD IN OPMV 385/1999 of ADL.D.C. & MACT, THODUPUZHA DATED
18-09-2004

APPELLANT(S): PETITIONERS

1. SANTHA, W/O.LATE KUNJU

2. BIJU.K, S/O.LATE KUNJU

3. BINDU, D/O.LATE KUNJU
ALL ARE RESIDING AT SANTHA NIVAS, WEST KODIKULAM PO
THODUPUZHA.

BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.JAISON JOSEPH

RESPONDENT(S):

1. THANKARAJAN, S/O.THIRUMOORTHY
PUNDARAPADY, POST 5/26 PUNDARAPADY VILLAGE
POLLACHI THALUK, COIMBATORE .(DELETED)

2. MS/. ANNAMALAI ROADWAYS COMPANY
PROP. ANNAMALAI AGENCIES 504/2-B
NEW SEERAPALAYAM VILLAGE, EACHANARI PO
POLLACHI MAIN ROAD, COIMBATORE.

3. NEW INDIA ASSURANCE COMPANY LIMITED
COIMBATORE PIN 641 001.
(NAME OF R1 DELETED AS PER ORDER IN IA 524/2015 DT.20.2.2015)
R,R3 BY ADV. SMT.RAJI T.BHASKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

MACA No.1332 of 2011

Dated this the 23rd day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants are the claimants before the Tribunal. They are the widow and children of one Kunju who died in a motor vehicle accident which took place on 24.12.1997. The accident occurred while he was travelling in his scooter with one Shaji, through the M.C. Road. The offending vehicle is a lorry bearing Reg. No.TN 37/Q/3320 driven by the first respondent which hit against the scooter and he sustained serious injuries. He was immediately taken to San Jose Hospital, Perumbavoor and thereafter was admitted to the Medical Centre Hospital, Ernakulam for better treatment. Therein, he succumbed to his injuries on 29.12.1997.

2. The main argument is regarding the multiplicand and non grant of amounts under various heads like pain and suffering, funeral expenses, loss of consortium and compensation for love and affection.

Learned counsel for the appellants submitted that the deceased was working as an Overseer in the Kerala State Electricity Board having a monthly salary of Rs.8,823/- and Ext.A6 salary certificate has been produced. In paragraph 9 of the award, the Tribunal has discussed the evidence and fixed the net monthly income at Rs.5,132/-. Again one third has been deducted for personal expenses and then arrived at Rs.2,750/- for calculating the compensation. It is submitted that the same is not a correct method. The deceased was aged 50 at the time of accident and he would have attained superannuation on completion of 55 years.

3. Learned counsel for the insurance company submitted that the appellants cannot get the same multiplicand throughout the period of 13 years. The retirement being certain, it is submitted that the said factor should come to the picture for reckoning the due multiplicand.

4. Going by the evidence he was to attain superannuation on completion of 55 years. It is therefore clear that the deceased would not have earned income at the same rate after his retirement. For the purpose of fixing the compensation, since the service under the

K.S.E.B. is a pensionable one, we take 50% of the salary for the normal pension amount. In that view of the matter, taking Rs.8,820/- as the monthly income, since there are three appellants, one third can be deducted for personal expenses and therefore, the balance amount will be Rs.5,880/- and for five years the same rate will have to be taken. As far as the remaining 8 years are concerned, it will be calculated at the rate of Rs.2,940/-, viz. 50% of Rs.5,880/-. Going by the same, the yearly multiplicand will be 48,849.23 ($5880 \times 5 \times 12 + 2940 \times 8 \times 12 / 13$) and it will be 4070 monthly. The same can be uniformly adopted. Therefore, the dependency compensation will come to Rs.6,35,040/-. For pain and suffering, the Tribunal has granted only Rs.5,000/- which we enhance to Rs.10,000/- as he was under treatment for five days after sustaining severe injuries. As far as loss of consortium is concerned, only a sum of Rs.15,000/- has been granted by the Tribunal. In the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 - SC), we grant a sum of Rs.1 Lakh for loss of consortium. For love and affection, the Tribunal granted only a sum of Rs.15,000/-. It is submitted by the learned counsel for

the respondents that appellants 2 and 3 were major children even at the time of accident. Therefore, we grant a sum of Rs.50,000/- for loss of love and affection. For funeral expenses and transport to hospital, we grant a total sum of Rs.25,000/-. No amount has been granted towards loss of estate. We grant a sum of Rs.50,000/- under the head of loss of estate.

5. Accordingly, we recompute the compensation in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this court (Rs)</i>
Loss of dependency	363000	635040
Pain and suffering	5000	10000
Loss of consortium	15000	100000
Loss of love and affection	15000	50000
Loss of estate		50000
Funeral and transportation expenses	2000	25000
Total		870040

(Rupees Eight lakhs seventy thousand and forty only)

The enhanced amount will carry interest at the rate of 9% per annum from the date of petition and there will be a direction to the

insurance company to deposit the entire amount of compensation, less the amount already deposited before the Tribunal, within a period of three months. We direct that 75% of the compensation will be earmarked for appellant No.1 and the remaining amount will be shared equally by appellants 2 and 3.

The appeal is allowed as above. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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