

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

MACA.No. 60 of 2010 ()

**AGAINST THE AWARD IN OP(MV) 243/2006 OF PRINCIPAL MOTOR ACCIDENT CLAIMS
TRIBUNAL, KOZHIKODE DATED 29-07-2009**

APPELLANT/PETITIONER IN OP(MV):

**SAFEENA, W/O. (LATE) NIYAS
PAYYAPARAMBIL HOUSE, P.O.UNNIKULAM
KOZHIKODE DISTRICT.**

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS/RESPONDENTS IN OP(MV):

- 1. M.ABDUL SATHAR, S/O. ABOOBACKER HAJI
MUTHUVETTASSERY HOUSE, P.O.ELETTIL, KOZHIKODE.**
- 2. ORIENTAL INSURANCE CO.LTD.,
DIVISIONAL OFFICE, SEEMA BUILDING, GH ROAD
KOZHIKODE.**

**R1 BY ADV. SRI.T.G.RAJENDRAN
R2 BY ADV. SRI.M.JACOB MURICKAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.60 of 2010

Dated this the 1st day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

An infant aged 1 ½ years old died in an accident along with her father on 16.10.2005 and her mother is the claimant and she is aggrieved by the inadequacy of compensation granted consequent on the death of the child. As against the total claim of Rs. 2 lakhs the Tribunal has awarded Rs.75,500/- under different heads.

2. While calculating the loss of dependency, the Tribunal has not adopted any multiplier/multiplicand method but awarded Rs.50,000/- and for loss of love and affection Rs.20,000/-, for funeral expenses Rs.3,000/-, for transportation Rs.2,500/-. For pain and suffering of the deceased or for the mental agony of the appellant nothing has been granted by the Tribunal which also is the

contention raised by the appellant. It is submitted that the compensation granted is too low.

3. It is true that as far as the fixation of quantum in the case of death of children up to the age of 15 so many imponderables have to be considered by this court. The question is no longer res integra. A Division Bench of this Court in a decision reported in **Sree Devi v. K.S.R.T.C. [2011 (3) KLT 716]** after considering the decisions of the Apex court in **M.S. Grewal v. Deep Chand Sood (AIR 2001 SC 3660)** and **Lal Wadhwa v. State of Bihar (AIR 2001 SC 3218)**, was finally of the view that 2nd Schedule under Section 163A at least could be relied upon by the claimant to get compensation. After going through the judgment, we are also of the view that the said method can be adopted herein also as there is no other guidance for fixing quantum of compensation fairly especially in the case of an infant. The multiplier that can be adopted is 15 and the annual income can be fixed at Rs.12,000/- and going by the schedule compensation for loss of dependency will be

Rs.2,40,000/- which we adopt herein. For loss of love and affection we fix an amount of Rs.75,000/-, for funeral expenses we grant an amount of Rs.5,000/- and for pain and suffering of the deceased we grant Rs.5,000/-.

Head of Claim	Amount awarded in rupees
Loss of dependency	240000
Loss of love and affection	75000
Funeral expenses	5000
Pain and suffering	5000
Transportation	2500
Total	327500

Therefore, the total amount of enhanced compensation is Rs.3,27,500/- (Rupees three lakhs twenty seven thousand five hundred only). The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation. There will be a direction to the Insurance Company to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three months and we permit the claimant to withdraw the amount when the amount is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/