

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

MACA.No. 102 of 2010 ()

AGAINST THE AWARD IN OPMV 320/2006 of MACT, IRINJALAKUDA DATED
25-08-2009

APPELLANTS/PETITIONERS:

1. DIVYA,AGED 28 YEARS,
D/O.DECEASED GOPI, THUDUPPATH(H), P.O.KOOLIMUTTAM
KODUNGALLUR.

2. DHANYA,AGED 26 YEARS,DO---- DO---.

3. DEEPTHI,AGED 21 YEARS,
--DO-----DO.

4. DEEPAK,AGED 20 YEARS,
---DO-----DO.

5. JANAKY,AGED 69 YEARS,
M/O.DECEASED GOPI, DO-----DO.

BY ADVS.SMT.JEENA JOSEPH
SRI.G.D.PANICKER

RESPONDENTS/RESPONDENTS:

1. ABDUL JALEEL,S/O.PATHUMMA,ACHIPRA(H),
P.O.BEEMANADU, ALANALLUR VIA, PALAKKAD.

2. ABDUL AZEES,S/O.MUHAMMED,ACHIPRA(H),
P.O.BEEMANADU, ALANALLUR VIA, PALAKKAD.

3. ICICILOMBARD GENERAL INSURANCE CO.LTD,
KANNANKERY ESTATE, 3RD FLOOR, MARINE DRIVE
SHANMUGAM ROAD, COCHIN.

R3 BY ADV. SRI.LAL GEORGE
R1,R2 BY ADV. SRI.C.M.KAMMAPPU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.102 OF 2010

Dated this the 24th day of February, 2015

JUDGMENT

Asha, J.

The appellants are the legal heirs of deceased Gopi who met with an accident at Kottamkulam on 12.2.2006 while he was walking along the road on being hit down by a mini bus. The claim petition was filed seeking compensation to the tune of ₹ 3 lakhs. The Tribunal awarded a sum of ₹1,78,000/-.

2. This appeal is filed seeking enhancement of compensation. The learned counsel for the appellants submitted that the Tribunal did not apply proper multiplier on the reason that the wife of the deceased was not alive at the time of the accident and there were major daughters also. Therefore it was found that there was no major dependency factor in the case except in the case of claimants 3 and 4 who were aged 16 and 17. The learned counsel for the appellant submitted that all the daughters were unmarried and they were very much dependent on the deceased.

3. We heard the learned counsel for the Insurance company who opposed the claim for enhancement.

4. The deceased was a coconut climber. The Tribunal has reckoned the income only @ ₹2,000/-. The accident occurred on 12.2.2006. Going by the wage structure prevailing at the relevant time in respect of coconut climbers, we are of the view that a sum of ₹3,500/- can be taken as the income in respect of the deceased. The deceased was aged 45. Therefore, the proper multiplier to be adopted is 14. Therefore, the compensation under the head of dependency will come to ₹3,78,000/- (3000 x 12 x 14 x $\frac{3}{4}$).

5. The Tribunal awarded a sum of ₹10,000/- only towards loss of love and affection. The appellants are three daughters and son of the deceased who lost the love and affection of their only parent. Therefore, we award a sum of ₹1,50,000/- towards loss of love and affection. Towards funeral expenses, only a sum of ₹3,000/- has been awarded. In the light of the judgment of the Supreme Court in **Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC)**, we enhance the same to ₹25,000/-. It is seen that a sum of ₹5,000/- alone is granted towards pain and suffering. We enhance the same to ₹10,000/-. Towards loss

of estate, we award a sum of ₹30,000/-.

6. Accordingly, the award of the Tribunal is modified as follows :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of dependency	378000
Loss of love and affection	150000
Funeral expenses	25000
Pain and suffering	10000
Loss of estate	30000
Total	593000 (Rupees five lakhs ninety three thousand only)

7. The enhanced amount will carry interest @ 9% per annum.

The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. The apportionment of compensation shall be made as directed by the Tribunal. The Insurance Company will be entitled to recover the amount from the first respondent as directed in the award by the Tribunal.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

sv.

P.V.ASHA, JUDGE