

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 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

MACA.No. 1950 of 2007 ()

**AGAINST THE AWARD IN OPMV 363/2004 of MOTOR ACCIDENTS CLAIMS
TRIBUNAL, OTTAPPALAM DATED 22-08-2006**

APPELLANT(S)/APPELLANTS/PETITIONERS::

- 1. THANKAMMA, AGED 48 YEARS,
W/O. RAJAN, CHULLIVALAPPIL HOUSE, IRUNILAMKODE P.O
MULLURKKARA (VIA), THRISSUR.**
- 2. RAJANY, AGED 19 YEARS,
W/O. BABU P.R. (LATE), CHULLIVALAPPIL HOUSE
IRUNILAMKODE P.O., MULLURKKARA (VIA), THRISSUR.**
- 3. SHAJU, AGED 24 YEARS,
S/O. RAJAN, CHULLIVALAPPIL HOUSE, IRUNILAMKODE P.O.
MULLURKKARA (VIA), THRISSUR.**
- 4. RAJAN, AGED 50 YEARS,
CHULLIVALAPPIL HOUSE, IRUNILAMKODE P.O.
MULLURKKARA (VIA), THRISSUR.**

SUPPL.

- 5. BABURAJ, AGED 5 MONTHS, REPRESENTED BY HIS
GUARDIAN, MOTHER 2ND PETITIONER, RAJANY.**

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENT(S)/RESPONDENTS::

- 1. SAJEEVKUMAR, S/O. RAMAKRISHNAN,
PLAVINKOOTTATHIL HOUSE, KUTTOOR.**

**2. KESAVADAS, S/O. LATE BALAKRISHNAN,
ATTOOR HOUSE, CHOOLISSERY, THRISSUR.**

**3. THE NATIONAL INSURANCE CO. LTD.,
SHRIRAM SITE OFFICE, 2-A, PRAKASAM ROAD
T. NAGAR, CHENNAI., P.NO.501602/31/03/5301066
VALID FROM 27-11-2003, TO 26-11-2004.**

R,R3 BY ADV. SMT.SARAH SALVY

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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

.....
M.A.C.A. No. 1950 of 2007
.....

Dated this the 30th day of March, 2015.

J U D G M E N T

P.V. Asha, J

The appellants are the parents, brother, wife and minor child of deceased Babu, who met with an accident on 26-12-2003. The accident occurred when the bus in which he was travelling, hit on a post. The deceased fell down and sustained injuries. Immediately, he was taken to West Fort Hi-Tech Hospital, Thrissur. After 74 days of inpatient treatment he succumbed to the injuries on 29-3-2004.

2. This appeal is filed seeking enhancement of compensation. The claim petition was filed seeking compensation to the tune of Rs.15,00,000/-. But the Tribunal awarded a sum of Rs.3,70,574/- only.

3. We heard the learned Counsel appearing for both sides.

4. The deceased was aged 24 years at the time of the accident. He was a member of the Railway Construction Labours Union and it was claimed that he was earning a sum of Rs.3500/- per month. The Tribunal has fixed the income at the rate of Rs.3000/- per month. After deducting 1/3rd towards personal expenses, the Tribunal awarded a sum of Rs.2,64,000/- under the head of compensation towards loss of dependency. The wife was aged 19 years. She was awarded a sum of Rs.30,000/- towards loss of consortium. The award is challenged on inadequacy of the quantum of compensation awarded on various grounds.

5. In the light of the judgment of the Apex Court in **Rajesh vs. Rajbir Singh (2013 (3) KLT 89(SC))**, the claimants are entitled to a sum of Rs.1,00,000/- towards love and affection, Rs.25,000/- towards funeral expenses and widow is entitled to a sum of Rs.1,00,000/- towards loss of consortium. As the deceased was engaged as a

construction worker in the railway, we are of the view that the monthly income claimed as Rs.3,500/- is reasonable and hence we adopt the same to fix it as monthly income towards loss of dependency. The Tribunal has adopted the multiplier of 11. In the light of the judgment of the Apex Court in **Sarala Verma vs. Delhi Transport Corporation (2010(2) KLT 802 (SC))**, the multiplier is to be adopted on the basis of the age of the deceased. As the deceased was 24 years old, the proper multiplier is 18. Therefore, reckoning the monthly income as Rs.3,500/-, adopting multiplier as 18 and after deducting $\frac{1}{4}^{\text{th}}$ towards personal expenses a sum of Rs. 5,67,000/- ($3500 \times 12 \times \frac{3}{4} \times 18$) is admissible to the appellants towards loss of dependency. The Tribunal has not awarded any amount towards loss of estate. We award a sum of Rs.35,000/- towards loss of estate. It is seen that the deceased was under the in-patient treatment for a period of 74 days for which the Tribunal has awarded a sum of Rs.11,100/- only. We enhance the same to Rs.14,800/- at the rate of Rs.200/- per day. The

award passed by the Tribunal is modified as follows.

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount modified.</i>
Loss of dependency	264000	567000
Medical expenses	27301	27301
Loss of consortium	30000	100000
Loss of love and affection	30000	100000
By-standers expenses	11100	14800
Travelling expenses.	3173	3173
Funeral expenses	5000	25000
Loss of estate		35000
Total		8,72,274/-

(Rupees eight lakhs seventy two thousand two hundred and seventy four only)

6. Therefore, the total compensation will come to Rs. 8,72,274/-. The enhanced compensation will carry interest at the rate of 9% per annum. The insurance company will deposit the modified amount, less any amount already deposited before the Tribunal, within a period of three months. The compensation awarded shall be shared between appellants 2 and 5 equally. The share for the minor child shall be kept in fixed deposit in a nationalised bank till the child attains majority.

The appeal is allowed as above. The parties shall bear respective costs in the appeal.

T.R.RAMACHANDRAN NAIR
JUDGE

P.V. ASHA
JUDGE

smm

