

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 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

MACA.No. 485 of 2009 ()

AGAINST THE AWARD IN OPMV 620/2003 of M.A.C.T. TIRUR DATED
27-12-2006

APPELLANTS/PETITIONERS:

1. KALI, AGED 45 YEARS, W/O VELAYUDHAN
THAVARAKUNNU HOUSE, P.O.VENGAD, KOLATHOOR
MALAPPURAM DISTRICT.

2. PREMAKUMARI, AGED 30 YEARS,
D/O.VELAYUDHAN THAVARAKUNNU HOUSE, P.O.VENGAD
KOLATHOOR MALAPPURAM DISTRICT.

BY ADV. SRI.N.KRISHNANKUTTY PILLAI

RESPONDENTS/DEFENDANTS:

1. RAZA, S/O MOHAMMEDKUTTY
POOKOPANAYANGAL
HOUSE, POOVANTHUMTHARA DESOM, EDAYOOR PO
VALANCHERY, MALAPPURAM DIST.

2. SAFARUDEEN, S/O. KUNJAYMU,
VALIYAPARAMBIL HOUSE, POOVANTHUMTHARA DESOM, EDAYOOR
PO, VALANCHERY, MALAPPURAM DIST.

3. THE MANAGER UNITED INDIA INSURANCE CO
LTD, TIRUR BRANCH, TIRUR PO
MALAPPURAM DISTRICT.

4. MOHAMMED SHERIF, S/O.ABOOBAKKER,
UROTHODI HOUSE, THIRURKAD PO, MALAPPURAM DISTRICT.

R3 BY ADV. SRI.RAJESH THOMAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.485 OF 2009

Dated this the 29th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants are before this Court seeking for enhancement of compensation. The husband of the first appellant died in an accident which occurred on 30/04/2003. The deceased was a pedestrian and was hit by a speeding car bearing Reg.No.KL-11C-2509 which was coming through Valancherry-Kozhikode public road. Even though he was taken to the hospital, namely Medical College Hospital, Kozhikode, he succumbed to the injuries after four days.

2. Appellant No.2 is the daughter of the deceased. The deceased had sustained head injuries as well as to the ribs. The deceased was an umbrella repairer. The monthly income claimed was ₹3,000/- which was accepted by the Tribunal. On the ground that no evidence was produced to show that appellant No.2 is not married, the Tribunal found that only appellant No.1 is the dependent.

3. The learned counsel for the appellants submitted that the said finding is totally erroneous. We also find force in the above submission. The averments in the application will show that she was unmarried. She is a legal heir also. Therefore, while calculating compensation towards loss of dependency, 1/3 will have to be deducted towards personal expenses of the deceased. The deceased was in the hospital for four days and the Tribunal has not granted any amount towards hospital charges and bystander expenses. Only ₹5,000/- was granted towards pain and suffering. It is evident that he had suffered very severe fatal injuries and therefore a reasonable compensation will have to be granted under that head. For loss of consortium, only ₹5,000/- has been granted and for loss of love and affection, nothing has been granted. What is awarded towards funeral expenses is ₹3,000/-. All these are liable to be reasonably enhanced in the light of the judgment of the Apex Court in **Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC)**.

4. Accordingly, we re-fix the compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	312000 (3000 x 12 x 13 x 2/3)
Transport to hospital	3000
Pain and suffering	15000
Funeral expenses	25000
Hospital charges including bystander's expenses	2000
Loss of consortium	100000
Loss of love and affection	100000
Total	557000 (Rupees five lakhs fifty seven thousand only)

5. The enhanced compensation will carry interest @ 9% per annum from the date of petition. This appeal was filed with a petition to condone the delay of 695 days and while condoning the delay, this Court passed an order in C.M.Appln.No.509/2009 making it clear that the appellants will not be entitled for interest for the said period and we confirm the same.

6. We also direct that the enhanced compensation will be shared equally by the appellants and since the Insurance Company is found liable by the Tribunal, they will deposit the amount within

interest within three months and we permit the appellants to withdraw the amount also. The Tribunal will release the amount after recovering the court fee payable for the amount of compensation fixed by this Court.

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.