

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

MACA.No. 1883 of 2013 ()

AGAINST THE AWARD IN OPMV 2532/2007 of MACT,EKM DATED 31-08-2011
APPELLANT(S)/APPELLANTS/PETITIONERS:

1. LEELA SUNDARAN AGED 71 YEARS
W/O. LATE SUNDARAN, RESIDING AT CHEERKAKUZHI VEEDU
NURSARY SCHOOL ROAD, PONNURUNNI, CHALIKKAVATTOM
VYTTILA P.O., COCHIN-19.

2. VINITHA BABU AGED 41 YEARS
W/O. LATE C.S.BABU, RESIDING AT CHERKAKUZHI VEEDU
NURSARY SCHOOL ROAD, PONNURUNNI, CHALIKKAVATTOM
VYTTILA P.O., COCHIN-19.

3. VANDHANA BABU AGED 19 YEARS
D/O. LATE C.S.BABU, RESIDING AT CHERKAKUZHI VEEDU
NURSARY SCHOOL ROAD, PONNURUNNI, CHALIKKAVATTOM
VYTTILA P.O., COCHIN-19.

4. SREEJITH BABU AGED 14 YEARS
S/O. C.S.BABU, (D.O.B. 3-4-99), MINOR
REP. BY HIS MOTHER AND GUARDIAN VINITHA BABU
W/O. LATE C.S.BABU, AGED 35
RESIDING AT CHERKAKUZHI VEEDU, NURSARY SCHOOL ROAD
PONNURUNNI, CHALIKKAVATTOM, VYTTILA P.O.
COCHIN-19

BY ADVS.SRI.K.JANARDHANAN
SMT.P.C.JEEVA
SRI.K.J.MANU RAJ

RESPONDENT(S)/RESPONDENT/RESPONDENTS:

1. SATHYARAJ, AGED 51 YEARS
S/O. CHARLIES, MEKUKARAPUTHAN VEETIL, KEZHKOLLA DESOM
NEYATINKKAR, THIRUVANANTHAPURAM. (DELETED)

2. THE MANAGING DIRECTOR
KSRTC, THIRUVANANTHAPURAM.
(NAME OF R1 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA 390/2015
DATED 11.3.2015)

R2 BY SRI.SREEPRAKASH K.NAIR, SC, KSRTC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1883 of 2013

Dated this the 11th day of March, 2015

JUDGMENT

Asha, J.

The mother, widow and two children have filed this appeal seeking enhancement in compensation towards the death of late Sundaram who succumbed to the injuries sustained to him in a motor vehicle accident on 20.9.2007. The deceased Sundaram was riding a motor cycle when a KSRTC bus hit against him which caused fatal injuries to him.

2. The claim petition was filed seeking compensation to the tune of Rs.11,07,500/-. The Tribunal awarded a sum of Rs.5,85,000/-. Learned counsel for the appellants submitted that the compensation awarded by the Tribunal is thoroughly inadequate. It is pointed out that the deceased was working as a sub contractor. Even though a sum of Rs.6,500/- was claimed as monthly income, the Tribunal reckoned Rs.4,000/- alone.

3. When the matter came up for admission we heard the matter and the same is being disposed. We heard learned counsel for the KSRTC also who opposed the claim for enhancement.

4. In view of the fact that the appellant was working as a sub contractor, we are of the view that the income can be fixed at Rs.5,000/- per month, especially in view of the fact that there is no evidence to the contrary. Therefore, the compensation under the head of loss of dependency will come to Rs.6,75,000/- (Rs.5000/- x 12 x $\frac{3}{4}$ x 15). The Tribunal awarded a sum of Rs.2,000/- only for funeral expenses, Rs.15,000/- for loss of love and affection and Rs.15,000/- for loss of consortium. In view of the judgment of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 - SC) and **Savitha v. Binder Singh** {(2014) 4 SCC 505}, we award a sum of Rs.25,000/- towards funeral expenses; since there are two children we award a sum of Rs.1,50,000/- towards loss of love and affection and Rs.1 lakh towards loss of consortium to widow. The Tribunal has awarded a sum of Rs.5,000/- for pain and suffering which we enhance to Rs.10,000/-. For loss of estate also, the Tribunal awarded only Rs.5,000/- which we enhance to Rs.30,000/-.

Therefore, the award passed by the Tribunal is modified as follows:

<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	540000	675000
Transport to hospital	3000	3000
Funeral expenses	2000	25000
Pain and suffering	5000	10000
Loss of love and affection	15000	150000
Loss of estate	5000	30000
Loss of consortium	15000	100000
Total		993000

(Rupees Nine lakhs and ninetythree thousand only)

The enhanced amount of compensation will carry interest at the rate of 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months.

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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The words “insurance company” occurring in the operative portion of the judgment at page 3 are corrected and substituted as

“second respondent K.S.R.T.C.” as per order dated 9.4.2015 in I.A.1451/2015 in M.A.C.A.1883/2013.

sd/- Registrar (Judicial) in charge