

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

MACA.No. 1947 of 2013 ()

AGAINST THE AWARD IN OPMV 344/2009 of M.A.C.T.,
ERNAKULAM DATED 03-05-2013
APPELLANT(S)/ADDITIONAL PETITIONERS 2-4 IN OPMV 344/2009:

1. BHAGYALAKSHMI
W/O.LATE PALANISWAMI, 1/15 NO.HOUSE
THAMARAKULAM VILLAGE, POLLACHI TALUK, TAMILNADU STATE.

2. P.SANTHI
D/O.LATE PALANISWAMI, 1/15 NO.HOUSE
THAMARAKULAM VILLAGE, POLLACHI TALUK, TAMILNADU STATE.

3. P.VASANTHI
W/O.LATE PALANISWAMI, 1/15 NO.HOUSE
THAMARAKULAM VILLAGE, POLLACHI TALUK, TAMILNADU STATE.

BY ADVS.SRI.C.CHANDRASEKHARAN
SRI.P.VISWANATHA MENON

RESPONDENT(S)/RESPONDENTS IN OPMV 344/2009:

1. M.D.GEORGE
S/O.DAVID, MADAPILLY HOUSE, PUKATTUPADI
EDATHALA, ERNAKULAM.

2. SHAJU, AGED 39 YEARS
S/O.PAULOSE, KUTTIKADAN HOUSE (PULINKARA HOUSE)
KUTTICHIRA VILLAGE, MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

3. ICICI LOMBARD MOTOR INSURANCE CO.LTD.
ZENITH HOUSE, KESAVARAO KHADE MARG, MUMBAI-400 034.

R3 BY ADV. SRI.R.AJITH KUMAR VARMA(128/84)
R1 BY ADV. SRI.M.K.DILEEPAN
R1 BY ADV. SMT.P.SUMITHRA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1947 of 2013

Dated this the 9th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants are the widow and children of deceased Palaniswamy who sustained injuries in an accident which occurred on 18.11.2008 at Thykkoodam on Vyttila - Kundannoor bypass. The claim petition was filed initially by the injured who died during the pendency of the petition and appellants were impleaded as additional petitioners 2 to 4.

2. The deceased was driving a container lorry bearing Reg. No. TN 38 AM-7679 and it collided with a tipper lorry bearing Reg. No. KL-40A 3441. The claim petition was filed seeking compensation to the tune of Rs.10 Lakhs and the Tribunal granted a total amount of Rs.3,41,800/- as compensation.

3. We heard learned counsel on both sides.

4. The Tribunal found that the driver of the offending vehicle was

negligent in causing the accident. We have gone through the discussion in paragraph 7 of the award. It is submitted by the learned counsel for the appellants that the evidence of P.W.1, employer will show that the victim was having a monthly income of Rs.10,000/-. P.W.1 was examined to prove Ext.A9. The Tribunal found that Ext.A9 cannot be accepted as there is no supporting document.

5. It is submitted that the deceased was a heavy transport vehicle driver which fact is found by the Tribunal also. The driving licence has been produced but it was not marked. Since he himself was driving the lorry at the time of accident, there cannot be any dispute regarding his employment. The accident occurred on 18.11.2008. The Tribunal has assessed the notional income at Rs.6,000/- per month. We find that a reasonable amount can be fixed as monthly salary of the deceased which we take as Rs.9,000/-.

6. The Tribunal has fixed the compensation for loss of earning capacity by adopting the multiplier method but upto the date of death, viz. 18.7.2010. The death is not proved to be due to the injuries sustained in the accident. The Tribunal considered various claims upto

the date of death. The report of the Medical Board showed that he had sustained permanent disability at 10%. Out of the total compensation, Rs.2,40,000/- represents the medical expenses. An amount of Rs.40,000/- was granted for pain and suffering, a sum of Rs.10,200/- was granted for permanent loss of earning power and Rs.15,000/- for loss of amenities and enjoyment in life.

7. Learned counsel for the appellant Shri C. Chandrasekharan vehemently argued for enhancement of compensation, whereas learned counsel for the insurance company submitted that reasonable compensation has been granted

8. We find from the records that the deceased sustained the following injuries: (i) Fracture of both bones (Lt) leg mid shaft; (ii) Fracture proximal fibula (Lt) leg; and (iii) Lacerated wound on left leg. He was given treatment by wound debridment with 88G external fixation (L) tibia, IM nailing done for (Lt) tibia and on 19.11.2008 R.A. external fixation applied to (Lt) tibia. The inpatient treatment is for two months. It is not evident whether he continued outpatient treatment thereafter. We, therefore, are of the view that a reasonable

enhancement can be given for compensation for pain and suffering. The total claim under this head was Rs.2 lakhs, out of which Rs.40,000/- has been granted. We enhance the amount to Rs.50,000/-. For loss of earnings, what is granted is Rs.18,000/-, viz. for three months. Since we have increased the monthly income to Rs.9,000/-, the appellants are entitled to get a sum of Rs.27,000/- for loss of earnings for three months. As bystander's expenses the Tribunal has granted Rs.9,600/- for the period of inpatient treatment, viz. 48 days which we enhance to Rs.12,000/- taking Rs.250/- per day. As compensation for permanent loss of earning power what is granted by the Tribunal is Rs.10,200/-, viz. from 18.2.2009 to 18.7.2010 (17 months). We refix the same to $\text{Rs.}9000 \times 17 \times 10/100 = \text{Rs.}15,300/-$. We also grant an amount of Rs.35,000/- towards loss of amenities and enjoyment of life.

Accordingly, the total compensation is refixed in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Transport to hospital	2500	2500
Loss of earning	18000	27000
Extra nourishment	6000	6000

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Bystander's expenses	9600	12000
Medical expenses	240000	240000
Pain and suffering	40000	50000
Permanent loss of earning power	10200	15300 (Rs.9000/- x 17 x 10/100)
Loss of amenities and enjoyment in life	15000	35000
Damage to clothing and articles		500
Total	341800	388300

(Rupees Three lakhs eighty-eight thousand and three hundred only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition till realisation and the insurance company is directed to deposit the entire amount of compensation less the amount deposited, if any, 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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