

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 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

MACA.No. 2213 of 2007 ()

AGAINST THE AWARD IN OPMV 689/2005 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, PALA DATED 14-02-2007

APPELLANTS/PETITIONERS::

1. CHINNAMMA, W/O.LATE ISSAC,
PAYIPPATTU HOUSE, POONJAR VADAKKEKKARA VILLAGE.

2. ROMEO P.I., S/O. LATE ISSAC,
PAYIPPATTU, POONJAR VADAKKEKKARA VILLAGE.

3. ROBIO,
DATE OF BIRTH 20-05-1989, S/O.LATE ISSAC
POONJAR VADAKKEKKARA VILLAGE.

BY ADVS.SRI.GEORGE MATHEW
SRI.A.V.TELLES

RESPONDENTS/RESPONDENTS 1 TO 3::

1. VINOD T.S., S/O. SEKHARAN,
THANDADIYIL HOUSE, KIZHAKKANMATOM P.O., THODUPUZHA

2. MANOJ JOSEPH,
CHAMAPARAYIL HOUSE, MELUKAVU P.O.

3. THE NATIONAL INSURANCE CO. LTD.,
THODUPUZHA.

R3 BY ADV. SMT.SARAH SALVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A.No.2213 of 2007

Dated this the 2nd day of March 2015

JUDGMENT

Ramachandran Nair , J.,

The claimants are the appellants in this appeal. They are the widow and two children of the deceased Sri. Issac who died in a motor accident occurred on 4.7.2005. The Tribunal granted compensation to the tune of Rs. 4,51080/-.

2. The deceased was driving a Maruthi car bearing registration No. KL -7/Y- 2165 from Ernakulam to Moonnilavu. In the Thodupuzha- Erattupetta road at Olamattom bhagom a bus bearing registration No. KL-5/P-6462 hit the car and he sustained fatal injuries. He was admitted in the Chazhikattu Hospital, Thodupuzha and he died at 8.30 p.m on the same day. He was working as a U.D.Clerk in the Electrical Inspectorate, Thrissur under the State Government. Various documents have been produced before the Tribunal to prove the salary, accident and other details.

3. Learned counsel submitted that monthly gross salary of the deceased was Rs. 10,460/- and the Tribunal has calculated the net salary at Rs. 6,552/- which alone has been reckoned for fixing the quantum of compensation. It is submitted that the same is unjustified. We have gone through Ext.A1 certificate which shows that the scale of pay is Rs. 8390-13270 and the total salary as on 4.7.2005 is shown as Rs. 10460/-. The certificate is issued by the Electoral Inspector, Thrissur. It appears that the Tribunal has deducted the contribution towards insurance etc., which cannot be justified. Therefore, for calculating dependency compensation, we will have to take Rs. 10460/- as the monthly income. The multiplier adopted is 11 and he was due to retire on 31.10.2010. The Tribunal adopted the annual income after deducting 1/3 for personal expenses for a period of five years and the total amount towards dependency compensation is Rs. 2,62,080/-. After retirement, his income is notionally taken as Rs. 3,000/-. As far as the said method is concerned, according to us, since the pension amount, in the State service can be uniformly taken at least at the rate of

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50% calculation will have to be made accordingly. Going by the said method of calculation for the period of five years, he would have contributed the following amount. ie., $\text{Rs.}10460 \times 12 \times 5 \times \frac{2}{3} = 4,18,400/-$ and for the six years after retirement, the contribution will be $\text{Rs.}5230 \times 12 \times 6 \times \frac{2}{3} = 2,51,040/-$. Therefore, the total amount towards dependency compensation will be Rs. 6,69,440/-.

4. The claimants are also entitled for enhancement of compensation towards loss of consortium, loss of love and affection as well as the amount towards loss of estate, which has not been granted by the Tribunal. Therefore, we recompute the compensation in the following manner:

Sl. No.	Heads	Amount awarded	Amount modified
1	Transport to hospital	2000	2000
2	Funeral expenses	3000	25000
3	Pain and suffering	10000	10000
4	Loss of love and affection	15000	150000(2 children)
5	Loss of consortium	15000	100000
6	Loss of estate	-	100000
7	Loss of dependency	406080	669440
	Total	451080	1056440

5. Thus the total compensation will be Rs. 10,56,440/-

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(Rupees Ten lakh Fifty Six Thousand Four hundred and Forty only). The same will carry interest at the rate of 9% p.a for the enhanced compensation from the date of petition in the light of the judgment of the apex court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr. [(2009)4 SCC 513]**..

6. The amount will be divided equally among the appellants. We direct the Insurance Company to 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 and the claimants are allowed to withdraw the amount.

The appeal is allowed. No costs in the appeal.

**Sd/-
T.R.RAMACHANDRAN NAIR
(JUDGE)**

**Sd/-
P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge

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