

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 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

MACA.No. 2051 of 2013 ()

AGAINST THE AWARD IN OPMV 1193/2004 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, NEYYATTINKARA DATED 31-07-2010

APPELLANTS/APPLICANTS:

1. R.LATHA AGED 46 YEARS
W/O THE LATE SRI. RAJAN
RESIDING AT PARAMBUVILA VEEDU, ERICHALLOOR
PLAMOOTTUKADA P.O., KARODE VILLAGE, NEYYATTINKARA.

2. R.L.SHAJI AGED 27 YEARS
S/O THE LATE SRI. RAJAN
RESIDING AT PARAMBUVILA VEEDU, ERICHALLOOR
PLAMOOTTUKADA P.O., KARODE VILLAGE, NEYYATTINKARA.

3. R.L.SHIJU AGED 26 YEARS
S/O THE LATE SRI. RAJAN
RESIDING AT PARAMBUVILA VEEDU, ERICHALLOOR
PLAMOOTTUKADA P.O., KARODE VILLAGE, NEYYATTINKARA.

BY ADVS.SRI.R.NIKHIL
SMT.R.AMLA

RESPONDENTS/RESPONDENTS:

1. RAJAYYAN
S/O MATHAI
RESIDING AT KODIPARAMBNILTHALAKUZHI PUTHEN VEEDU
KOCHOTTUKONAM, MARIYAPURAM, CHENKAL VILLAGE
NEYYATTINKARA-695 121.

2. THE DIVISIONAL MANAGER
NEW INDIA ASSURANCE CO.LTD., NEYYATTINKARA
NEYYATTINKARA-695 121.

R2 BY ADV. SRI.M.RAJAGOPALAN
BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.2051 of 2013

Dated this the 15th day of January 2015

JUDGMENT

Ramachandran Nair, J.,

The wife and children of the deceased are the appellants herein. Sri. Rajan, husband of the appellant No.1 and father of appellants 2 & 3 died on 3.6.2004. He was alighting from his tempo bearing registration No. KL-01-AB-9379. He was travelling through the Udiankulangara-Pozhiyoor public road. A mini lorry bearing Registration No. KL-01-E-714 was coming in the reverse gear from inside the compound of the property of the Justus and hit against tempo van causing injuries to the deceased. He was immediately taken to the Medical College Hospital, Thiruvananthapuram where he succumbed to the injuries on the same day. He was aged 39 at the time of the accident who was a milk vendor earning an amount of Rs. 8,000/- per month.

2. Learned counsel for the appellant submitted that the Tribunal fixed the monthly income only at the rate of Rs. 2,500/- and did not grant adequate compensation for loss of love and affection, for loss of estate, for funeral expenses and for loss of consortium.

3. It is a case where the learned counsel for the appellant explained that, he was collecting milk from various places and carrying it to the milk collecting societies in his own vehicle. Therefore, it is submitted that the

income claimed is only reasonable. Learned counsel for the Insurance Company submitted that there is no documentary evidence to support the income. In a matter like this, for assessing compensation the Tribunal will have to assess various circumstances and for every one of items of income it will be difficult to produce documentary evidence. Here, he was owing the vehicle tempo van. According to the learned counsel for the appellant, the income claimed at the rate of Rs.8,000/- is reasonable. The accident is of the year 2004. Therefore, we will be justified in adopting Rs. 4,500/- as monthly income. The deceased being the age of 39, the multiplier will be 15. From this income $1/4^{\text{th}}$ is deducted towards personal expenses of the deceased.

4. Towards loss of love and affection and for loss of consortium going by the decisions of the apex Court, the claimant will be entitled to enhancement. It is in evidence that the wife of is deaf and dumb and the 3rd applicant is physically disabled person. The deceased was supporting their family out of the income earned by him which is recorded in paragraph 11 of the Award. As far as for pain and suffering is concerned, nothing has been granted by the Tribunal. We award an amount of Rs. 10,000/-.

5. Going by the decision of the Apex Court reported in Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC)), we enhance the compensation towards loss of consortium to Rs.1,00,000/- and towards funeral expenses to Rs.25,000/-. For loss of love and affection, since there are two children, we grant an amount of Rs. 1,50,000/-. The amount granted towards loss of estate is also just and reasonable. We fix an amount of Rs.30,000/- under the head loss of estate. Accordingly, we recompute the compensation in the following manner;

Sl.No.	Heads	Amt. Awarded(Rs)	Modified award (Rs)	basis
1	Transportation expenses	2000	2000	
2	Damage to clothing	500	500	
3	Loss of estate	10000	30000	
4	Loss of love and affection	15000	150000	75000x2
5	Pain and suffering		10000	
6	Funeral expenses	5000	25000	
7	Expenses incurred to the hospital			
8	Loss of consortium	10000	100000	
9	Loss of dependency	300000	6,07,500	
	Total	342500	9,35,000	

Thus the total compensation will be Rs.9,35,000/- (Rupees Nine lakh Thirty Five thousand only).

6. We are of the view that the interest at the rate of 7.5% p.a is too low and we fix the interest at the rate of 9% p.a from the date of petition by relying upon the decision of the apex court reported in ***Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. And Anr.[(2009)4 SCC 513]***.

7. The Insurance Company is directed to deposit the entire compensation less the amount already deposited within a period of three months. The amount will be disbursed in the proportion allowed by the Tribunal.

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

Sd/-
P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge