

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

MACA.No. 1748 of 2011 ()

**AGAINST THE AWARD IN OP(MV) 1669/2005 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THALASSERY DATED 30-10-2010
APPELLANTS/PETITIONERS:**

- 1. K.C.MOHANAN, AGED 45 YEARS
S/O.KRISHNAN NAMBIAR, "KRISHNALAYAM", KANAD
EDAYANNUR P.O., KANNUR DISTRICT.**
- 2. K.SHEEJA, AGED 30 YEARS,
W/O.K.C.MOHANAN, RESIDING -DO-.**

BY ADV. SRI.CIBI THOMAS

RESPONDENTS/RESPONDENTS:

- 1. KODANCHERI VENUGOPALAN, AGED 49 YEARS
S/O.CHANDANKUTTY, PAZHASSI AMSOM, NELLUNNI
MATTANNUR-670 702.**
- 2. K.M.MOHAMMED NAZEER E.K.,
"SHABEEL", KANNOTHUMCHAL ROAD, KANNUR-3.**
- 3. THE ORIENTAL INSURANCE CO.LTD.,
BRANCH OFFICE PB NO.8, JYOTHI SUPER BAZAR
THODUPUZHA-685 584.**

**R-3 BY ADV. SRI.VPK.PANICKER
R BY SRI.GEORGE CHERIAN (THIRUVALLA)**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

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

M.A.C.A.No.1748 of 2011

Dated this the 21st day of July, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This is an appeal preferred by the claimants in O.P. (M.V.)1669/2005 on the file of the Motor Accidents Claims Tribunal, Thalassery. The appeal is preferred challenging the quantum.

2. The case is that a minor aged only 7 years died in a motor accident occurred on 25.12.2004. The appellants are the parents of the deceased. They moved a claim petition for compensation for Rs.5 lakhs. The Tribunal awarded a total compensation of Rs.2,06,000/-. Aggrieved by the quantum of compensation, this appeal preferred.

3. When the appeal came up for hearing, the learned counsel for the appellants submitted before us that the only child of the appellants died in the accident. It is also the submission that the Tribunal awarded only Rs.10,000/- towards loss of love and affection. It is also brought to our

notice that towards funeral expenses only a sum of Rs.5,000/- awarded that also on “any other heads”. It is the further submission that no compensation is seen awarded on the head of pain and suffering. It is the further submission that the Tribunal considered a notional income of Rs.18,000/- per annum and while making the assessment the Tribunal should not have deducted 1/3rd from the same towards personal expenses. The deceased is only a minor and the said deduction should not have made. It is the further submission that the Tribunal failed in assessing the just compensation in this matter.

4. The learned counsel for the Insurance Company submitted before us that the deceased is aged only 7 years. It is the further submission that the compensation awarded towards loss of dependency warrants no interference. It is the further submission that Rs.1,80,000/- is seen awarded by the Tribunal on this head. It is also the further submission that the child being only aged 7 years, an interference is not warranted.

5. After hearing the counsel, we feel that appellants are entitled for compensation towards pain and suffering of the deceased as well as it can be seen that compensation awarded towards loss of love and affection is inadequate. The appellants are entitled for a hike on the compensation awarded on funeral expenses also. Under such circumstances the just compensation is assessed as follows:

Head of claim	Amount awarded in Rs.
Pain and suffering	10000
Loss of dependency	180000
Loss of love and affection	100000
Special compensation for future prospects	10000
Funeral expenses	25000
Transportation expenses	2000
Total	3,27,000 (Rupees three lakh twenty seven thousand only)

The appellants are entitled for a sum of Rs.3,27,000/- (Rupees three lakhs twenty seven thousand only). The enhanced amount with interest shall be shared equally in

between the appellants.

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellants will be entitled for the release of the amount.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/