IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

MACA.No. 811 of 2009 ( )

AGAINST THE AWARD IN OPMV 833/2004 of M.A.C.T.,KOLLAM DATED 28-10-2008
APPELLANT(S)/PETITIONERS:
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1. GEETHA AND OTHERS
SWAPNA NIVAS, MANAKARA MURI, SASTHAMCOTTAH VILLAGE
KOLLAM DISTRICT.

2. SWAPNA PRIYA,D/O.SASIDHARAN PILLAI,
SWAPNA NIVAS, MANAKARA MURI, SASTHAMCOTTAH VILLAGE
KOLLAM DISTRICT.

3. ARCHANA,D/O.SASIDHARAN PILLAI,
SWAPNA NIVAS, MANAKARA MURI, SASTHAMCOTTAH VILLAGE
KOLLAM DISTRICT.

4. CHELLAPPAN PILLAI,S/O.RAMAN PILLAI,
SWAPNA NIVAS, MANAKARA MURI, SASTHAMCOTTAH VILLAGE
KOLLAM DISTRICT.

5. OMANA AMMA,W/O.CHELLAPPAN PILLAI,
SWAPNA NIVAS, MANAKARA MURI, SASTHAMCOTTAH VILLAGE
KOLLAM DISTRICT.

BY ADVS.SRI.ANCHAL C.VIJAYAN
SMT.MINI.S.DAS

RESPONDENT(S)/RESPONDENTS:
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1. SATHEESH KUMAR AND OTHERS
KINARUVILAPADINJATTATHIL, VENGA, MYNAGAPPALLY
KOLLAM DISTRICT.(*DELETED)

2. G.BADRUDHEEN KUNJU,
THOPPIL-5, PANAPETTY MURI, PORUVAZHI (PO)
KOLLAM.

3. THE NATIONAL INSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE, KOLLAM.
NAME OF R1 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA 330/2015 DT.3.2.2015)

R,R3 BY ADV. SRI.JOE KALLIATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.811 of 2009

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Dated this the 22nd day of May, 2015

JUDGMENT

Ramachandran Nair, J.

The widow and children of deceased Sasidharan Pillai have approached this Court in this appeal, aggrieved by the quantum of compensation awarded by the Tribunal. He died in a motor vehicle accident which occurred on 13.3.2004. The accident occurred when the deceased was riding a motor cycle bearing Reg. No.KL-2/235. He fell down when a jeep bearing Reg. No.KL-2/G 930 hit the motor cycle and succumbed to the injuries on the same day. The evidence is to the effect that he was aged 48 years at the time of accident and was working as a Lineman in Kerala State Electricity Board, ("KSEB" for short) drawing a sum of Rs.11,170/- per month as salary. The total compensation claimed is Rs.13 Lakhs and the Tribunal awarded a sum of Rs.5,57,859/-.

2. We heard Shri Anchal C. Vijayan, learned counsel for the appellant and learned counsel for the insurance company, Shri Joe Kalliath.

3. Shri Anchal C. Vijayan submitted that the Tribunal has not added anything to the monthly salary for future prospects of the deceased. The deceased was drawing a sum of Rs.11,170/- per month at the time of accident and going by his age, he had 8 years of service further. According to the learned counsel, the monthly salary should have been reckoned uniformly for the entire period of 13 years and going by the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC), the multiplier will be 13. The method adopted by the Tribunal is one by which the retirement age was reckoned as 55 and then, upto the age of retirement an amount of Rs.7,447/- has been taken as the monthly salary and after retirement it has been reckoned as Rs.2,000/-. The Tribunal has also deducted 1/3rd for personal expenses.

4. The question is whether the appellants are entitled to claim the same amount throughout the period during which the multiplier will

operate. Of course, going by the decision of the Apex Court in **Sarla Verma's case** (supra), for future prospects 30% more will have to be added since the deceased was within the age group of 40 - 50. We, therefore, will have to reckon the monthly salary as Rs.14,520/- by adding 30% more. Even though it was strenuously contended by the learned counsel for the appellant that the same will have to be adopted uniformly, we cannot agree. The retirement being a certain, there will be a reduction of the monthly salary after retirement. The deceased was in the service of KSEB which is pensionable. What is highlighted by the learned counsel for the appellant is that even after retirement, the deceased will be able to earn more as he was a qualified electrician. But in the absence of any evidence with regard to any offer for appointment, which may not have been possible since he had remaining 8 years of service, we can only adopt the amount which would have been drawn by way of pension. Going by the rate of pension in the KSEB also, 50% of the salary can be reasonably assessed as pension amount after retirement. We are fortified in our view in the light of the judgment of this Court in **Valsa v. Ulahannan** (2015 (1) KHC 729)

Since the claimants are five in number 1/4th will have to be deducted for personal expenses. The calculation of dependency compensation therefore will be the following:

For the first 8 years - Rs.14520 x 12 x 8 x ¾ = R.10,45,440/-

For the remaining 5 years - Rs.7260 x 12 x 5 x ¾ =

Rs.3,26,700/-

The total of the above will be Rs.13,72,140/- and the annual contribution will be Rs.1,05,549.20. An amount of Rs.13,72,140/- will, therefore, have to be taken as loss of dependency as far as the family of the deceased is concerned. We are also of the view that for pain and suffering a reasonable amount of Rs.10,000/- can be granted, even though he died on the same day. Towards compensation for loss of consortium, only a sum of Rs.10,000/- has been granted by the Tribunal and we enhance the same to Rs.1 Lakh in the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 - SC). For loss of love and affection also, nothing has been granted by the Tribunal and we find that in the light of the decision of the Apex Court in **Kalpana Raj v. T.N. State Transport Corporation** {(2015

(2) SCC 764} an amount of Rs.1 Lakh can be granted as compensation for loss of estate and we grant the said amount. For transport to hospital and funeral expenses, only a sum of Rs.5,000/- has been granted by the Tribunal and we enhance the same to Rs.25,000/-.

Accordingly, we allow the appeal and the total compensation will be refixed in the following manner:

Head of claim	***amount awarded by the Tribunal***	***Modified award passed by this Court***
Transport to hospital and funeral expenses	5000	2000 + 25000
Medical Expenses	6335	6335
Pain and suffering	5000	10000
Loss of dependency	625548 + 95976	1372140
Loss of consortium	10000	100000
Loss of love and affection	10000	100000
Loss of estate		100000
Total		1715475

(Rupees Seventeen lakhs fifteen thousand four hundred and seventy-five only)

The enhanced amount of compensation will carry interest at 9% from the date of petition. Even though the claim was to the tune of Rs.13 Lakhs, in the light of the decision of the Apex Court in **Rajesh's case** (supra), there will not be any restriction for this Court to grant amount

more than what is claimed, since we are fixing just and fair compensation. The appellants will have to pay court fee for the total amount awarded by this Court and the balance court fee will be recovered by the Tribunal from the amount deposited by the insurance company. We direct the insurance company to deposit the entire amount of compensation less the amount already deposited, within a period of three months.

From out the total enhanced compensation, 50% will be apportioned in favour of appellant No.1, the widow of the deceased along with its interest and out of the remaining amount, Rs.75,000/- each with interest will be apportioned in favour of appellants 4 and 5 and the balance amount along with its interest will be shared equally by appellants 2 and 3.

The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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