

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

MACA.No. 618 of 2010 ()

**AGAINST THE AWARD IN OPMV 3419/2002 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THRISSUR DATED 02-04-2008
APPELLANTS/PETITIONERS:**

- 1. SUJI SHAJI, W/O. LATE SHAJI.**
- 2. ALAXIN (MINOR), S/O. LATE SHAJI.**
- 3. ANTHONY @ ANTONY**
- 4. MARY, W/O. ANTHONY @ ANTONY**
- 5. ALWIN C. SHAJI (MINOR) S/O,LATE SHAJI,
(MINOR APPELLANTS 2 AND 5 ARE REPRESENTED BY THEIR
GUARDIAN MOTHER THE IST APPELLANT HEREIN)
ALL ARE RESIDING AT CHAKKALAKKAL HOUSE, P.O. KUTTOOR
THRISSUR DISTRICT.**

**BY ADVS. SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.P.S.APPU
SRI.A.R.NIMOD
SRI.C.A.ANOOP**

RESPONDENTS/RESPONDENTS:

- 1. GOVINDANKUTTY, S/O. RAMAKRISHNAN,
RESIDING AT KUNDARINGATTU HOUSE, P.O. MUTHUVARA
PUZHAKKAL VILLAGE, THRISSUR DISTRICT.**

MACA.No. 618 of 2010 ()

- 2. RAJESH, S/O. PYARI, RESIDING AT
KALLATTU HOUSE, P.O. MUTHUVARA, PUZHAKKAL VILLAGE
THRISSUR DISTRICT.**
- 3. THE ORIENTAL INSURANCE COMPANY LTD.,
'U' BROTHERS BUILDINGS, GURUVAYOOR ROAD, KUNNAMKULAM
THRISSUR DISTRICT.**
- 4. THE NEW INDIA ASSURANCE COMPANY LIMITED,
MUNICIPAL SHOPPING COMPLEX, PALA.**
- 5. GEETHA RAJAN, W/O. LATE RAJAN,
RESIDING AT KAZHUNNAKKAL HOUSE, VELIYANNOOR
P.O. PALA.**

**R-3 BY ADVS. SRI.GEORGE CHERIAN (THIRUVALLA)
SMT. SANTHI (B/O NO MEMO)**

**R4 BY ADVS. SRI.KKM.SHERIF
SRI.A.A.ZIYAD RAHMAN**

R5 BY ADV. SRI.MATHEW ABRAHAM

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.618 of 2010

Dated this the 27th day of May, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred against the award dated 2.4.2008 in O.P.(M.V.) 3419/2002 on the file of the Motor Accidents Claims Tribunal, Thrissur. The claimants before the Tribunal are the appellants herein. The appellants are the wife, children and parents of the deceased. The motor vehicle accident occurred on 27.09.2002 at about 9 a.m. at Varadiyam.

2. The case of the appellants is that while Shaji was riding a motor cycle bearing registration No.KL-8/U-496 through Mundur - Kottekkad public road, a mini lorry bearing registration No.KL-8/A 9603 which was driven by the second respondent in a rash and negligent manner came from the opposite direction and hit against the motorcycle. Shaji sustained serious injuries and he succumbed due to the injuries on the very same day while

undergoing treatment at Amala Hospital.

3. The appellants herein preferred the claim petition before the Tribunal alleging negligence on the lorry driver and claimed a total compensation of Rs.6,50,000/-. After considering the materials before the Tribunal, the Tribunal awarded a sum of Rs.3,33,500/- as compensation. Aggrieved by the same, alleging that the quantum of compensation awarded is inadequate, this appeal preferred.

4. When the appeal came up for hearing, the learned counsel for the appellants submitted before us that the deceased was a self-employed man conducting automobile business and his monthly income will come more than Rs.5,000/-. But the Tribunal adopted only an amount of Rs.2,000/- as his monthly income. It is also the submission that the deceased was aged only 32 years and appellants are young wife and minor children. Ist appellant is aged only 23 years whereas 5th appellant is aged 8 months. The Tribunal awarded only a sum of Rs.15,000/- towards loss of love and affection and only Rs.15,000/- towards

compensation for consortium. The compensation awarded on loss of estate is also on lower side.

5. After hearing the counsels, it is found that a modification in the quantum assessed is warranted. The incident occurred in the year 2002. The case of the claimants is that the deceased was conducting automobile business. After considering the claim of the appellants regarding the deceased's avocation and all other attending circumstances, the monthly income of the deceased is taken as Rs.4,000/- per month. After considering the decision in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**, it is found that the deduction towards personal expenses applicable in this case will be $\frac{1}{4}^{\text{th}}$ as the claimants are four in number. The multiplier available will be 16 instead of 17 adopted by the Tribunal.

6. Accordingly, we refix the compensation as shown below:

Head of claim	Amount awarded in rupees
Expenses for transportation	1000
Damages to clothing	500
Expenses for funeral	25000
Compensation for pain and suffering	15000
Loss of love and affection	100000
Compensation for loss of dependency	(4000 x 12 x 16 x 3/4) 576000
Compensation for loss of estate	70000
Compensation for consortium	100000
Total	887500 (Eight lakh eighty seven thousand five hundred only)

The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation. Out of the enhanced compensation 50% of the amount shall be given to Ist appellant and the balance 50% will be shared by the appellant Nos.2 & 5 (children of deceased). There will be a direction to the Insurance Company to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three months and we permit the Ist appellant to withdraw the amount when the amount is deposited by the Insurance Company. The enhanced

compensation of minors shall be deposited till they attain majority. The appellants will have to pay balance court fee which will be recovered by the Tribunal from the amount to be deposited by the Insurance Company.

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

shg/