

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

MACA.No. 1041 of 2009 ()

AGAINST THE AWARD IN OPMV 1560/2004 of PRL.M.A.C.T.,
KOZHIKODE DATED 05-12-2008

APPELLANT(S)/PETITIONER:

1. N.C.NISHA, AGED 28 YEARS, WIFE OF LATE
A.T.PRADAS, ASARIKANDIYIL HOUSE, CHUNDUPURAM ROAD
KODUVALLY, KOZHIKODE.

2. A.P.NIMMA, AGED 9 YEARS, DAUGHTER OF
LATE A.T.PRADAS, ASARIKANDIYIL HOUSE, CHUNDUPURAM ROAD
KODUVALLY, KOZHIKODE.

3. A.P.NIKHIL, AGE 7 YEARS,
SON OF LATE A.T.PRADAS, ASARIKANDIYIL HOUSE
CHUNDUPURAM ROAD, KODUVALLY, KOZHIKODE.

4. A.P.PRANIL, AGED 3 1/2 YEARS,
SON OF LATE A.T.PRADAS, ASARIKANDIYIL HOUSE
CHUNDUPURAM ROAD, KODUVALLY, KOZHIKODE.

APPELLANTS TWO TO FOUR ARE MINORS AND THEY ARE
REPRESENTED BY THEIR MOTHER, THE FIRST APPELLANT.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENT(S)/RESPONDENTS:

1. ABRAHAM.O.R., SON OF ABRAHAM,
OLIKAPLAVIL HOUSE, KALLANODE POST, KOZHIKODE.

2. THE ORIENTAL INSURANCE CO.LTD.,
SREENIDHI BUILDING, P.B.NO.27, NARAYANA NAGAR
VATAKARA, KOZHIKODE.

R,R2 BY ADV. SRI.TITUS MANI VETTOM

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A No.1041 of 2009

Dated this the 27th day of January, 2015

JUDGMENT

Asha, J.

The widow and 3 minor children have filed this appeal seeking enhancement in the compensation. The deceased Pradas met with an accident while he was driving his autorickshaw on being hit by a jeep on 27.04.2004 and succumbed to the injuries. He was aged 40 years at the time of the accident. It was claimed that he was earning a monthly income of Rs.5,000/-. The claim petition was filed seeking compensation to the tune of Rs.6 lakhs. The Tribunal awarded a sum of Rs.3,17,666/- along with interest @ 7% per annum. The appellants are aggrieved by the inadequacy of compensation awarded by the Tribunal.

2. We heard the learned counsel appearing for the Insurance Company also.

3. The deceased was driving his own autorickshaw. Even though appellants claimed that he was earning an income

of Rs.5,000/- per mensem, the Tribunal has taken his annual income as Rs.26,000/-. Accordingly, a sum of Rs.2,66,666/- is awarded towards compensation under the head of dependency. The deceased was a driver. In the light of the judgment of the Supreme Court in **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors.** [(2013) 10 SCC 695] and having regard to the rate of wages prevailing at the relevant time, we deem it fit to fix the monthly income of the deceased at Rs.5,000/-. Therefore, the compensation towards loss of dependency will come to Rs.6,75,000/- ($5000 \times 12 \times 15 \times 3/4$). As there are 4 dependents, going by the dictum laid down in **Sarala Verma V Delhi Transport Corporation & Others 2010 (2) KLT 802**, $1/4^{\text{th}}$ of the income has to be deducted towards personal expenses. The multiplier adopted is 15 as the deceased was aged 40 years.

4. The Tribunal has awarded only a sum of Rs.5,000/- towards love and affection; Rs.10,000/- towards loss of consortium, Rs.1,500/- towards transportation and Rs.2,500/- towards funeral expenses. In the light of the judgment of the Supreme Court in **Rajesh v. Rajbir Singh [2013 (3) KLT 89 (S.C)]** we award a sum of Rs.1 lakh towards loss of consortium to

the widow, Rs.1,50,000/- towards loss of love and affection to the 3 children, Rs.25,000/- towards funeral expenses, a sum of Rs.25,000/- towards loss of estate. The Tribunal has awarded an amount of Rs.5,000/- towards pain and suffering and Rs.1,500/- towards transportation charges and we enhance Rs.5,000/- to Rs.10,000/- and Rs.1,500/- to Rs.2,500/-.

5. Accordingly we modify the award as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of dependency(Rs.5000X12X15X3/4)	Rs.6,75,000.00
2	Loss of consortium	Rs.1,00,000.00
3	Loss of love and affection	Rs.1,50,000.00
4	Pain and sufferings	Rs. 10,000.00
5	Transportation	Rs. 2,500.00
6	Funeral expenses	Rs. 25,000.00
7	Loss of estate	Rs. 25,000.00
	TOTAL	Rs.9,87,500.00

(Rupees Nine lakhs eighty seven thousand five hundred only)

The appellants will be entitled to a total compensation of Rs.9,87,500/- (Rupees Nine lakhs eighty seven thousand five hundred only). The enhanced amount will carry 9% interest per annum. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months, less the amount already deposited before the Tribunal . Out of the

total compensation, 40% will be disbursed to the widow and the remaining 60% will be disbursed to the children equally. The widow will be free to withdraw the amount. Similarly the children if became majors will also be free to withdraw the respective shares due to them. The shares due to minor children shall be kept in fixed deposits in their names in any nationalised bank till they attain majority.

The appeal is allowed accordingly. No costs.

The Court Fee towards the total awarded amount shall be recovered by the Tribunal before disbursement.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge