

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR  
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

MACA.No. 715 of 2010 ( )  
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AGAINST THE AWARD IN OPMV 567/2007 of MACT VADAKARA DATED 7.10.2009

APPELLANT/3RD RESPONDENT:  
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THE ORIENTAL INSURANCE CO.LTD.  
LIMITED, VADAKARA NOW REPRESENTED BY ITS  
ASSISTANT MANAGER, REGIONAL OFFICE, METRO PALACE  
KOCHI-18.

BY ADVS.SRI.MATHEWS JACOB (SR.)  
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONERS:  
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1. MAHAMOOD, S/O MOIDU, MEETHALE  
THAYYULLATHIL HOUSE, KARIYAD SOUTH PO  
PERINGATHOOR AMSOM, KANNUR DISTRICT.

2. NOUFAL,S/O.MAHAMOOD, DO. DO.

3. RASHIDA D/O.MAHAMOOD, DO. DO.

4. NASREENA,D/O.MAHAMOOD (MINOR) DO. DO.

5. NAHEEMA,D/O.MAHAMOOD (MINOR) DO. DO.

( RESPONDENTS 4 AND 5 MINORS ARE REPRESENTED BY THEIR  
FATHER FIRST RESPONDENT )

R1 TO 5 BY ADV. SRI.B.KRISHNAN  
R1 TO 5 BY ADV. SRI.R.PARTHASARATHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 01-06-2015, 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.715 OF 2010**  
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Dated this the 1<sup>st</sup> day of June, 2015

**JUDGMENT**

Ramachandran Nair, J.

In this appeal by the Insurance Company, the main challenge is regrading the multiplier adopted. It is in evidence that the deceased was aged 39 at the time of the accident.

2. The claimants are husband as well as children of deceased Shahiba who died in an accident which occurred on 22.4.2007 at about 7 p.m. She was walking through National Highway road at Mukkali and was hit by Tata Sumo car bearing Reg.No.KL 11 G 8535. She was taken to the Government Hospital, Vadakara, where she succumbed to the injuries. The application for compensation was filed by the four children and her husband together.

3. We have gone through the award. While considering the monthly income of the deceased, the learned Tribunal took it as Rs.3,000/- per month considering the loss of service of the wife, which

cannot be said to be exorbitant. But instead of deducting  $1/4^{\text{th}}$  for the personal expenses of the deceased,  $1/3^{\text{rd}}$  was deducted, which may not be correct. The multiplier was adopted based on the average age of the claimants. Going by the judgment in **Sarla Varma v. Delhi Transport Corporation ( 2010 (2 ) KLT 802 (SC)**, it should go by the age of the deceased and for the age group 36 to 40, the multiplier being 15, the same alone will be applicable. Therefore, under the head of loss of future dependency, the total amount that can be granted is Rs. 4,05,000/- (  $3000 \times 12 \times 15 \times \frac{3}{4}$ ), instead of Rs.4,32,000/- granted by the Tribunal.

4. The learned Senior Counsel for the Insurance Company therefore submitted that the total compensation may be reduced by the actual amount granted towards loss of future dependency.

5. The learned counsel for the claimants submits that in this case for loss of consortium only Rs.25,000/- has been granted and for funeral expenses, Rs.5,000/- alone has been granted. It is further submitted that for loss of expectation of life of the deceased and for loss of estate etc. only Rs.25,000/- is granted. It is also seen that for

loss of love and affection, Rs. 25,000/- each is granted to the claimants and a total amount of Rs. 1,25,000/- is granted under the said head for all the claimants together.

6. Of course, the question is whether the total amount awarded namely Rs.6,12,000/- will be a just and fair compensation. Going by the judgment of the Apex Court in **Rajesh v.Rajbir Singh ( 2013 (3) KLT 89 (SC)**, Rs. 25,000/- can be granted for funeral expenses and Rs. 1,00,000/- can be granted for loss of consortium. It is true that there is no appeal by the claimants. But in the light of the fact that Order XLI Rule 33 of C.P.C. will apply, we can consider whether the amounts granted will be a reasonable one.

7. Therefore even if Rs. 4,05,000/- alone is liable to the granted towards loss of future dependency instead of Rs. 4,32,000/-, the excess amount under the said head can be adjusted towards loss of consortium as well as funeral expenses. In that view of the matter, there will not be any variation to the total amount. The contentions of the appellants are upheld, but we are not interfering with the total amount of compensation.

The appeal is accordingly disposed of . No costs.

**T.R.RAMACHANDRAN NAIR, JUDGE**

**K.P.JYOTHINDRANATH,JUDGE**

SV.