

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

MACA.No. 2415 of 2013 ()

AGAINST THE AWARD IN OPMV 1558/2009 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA DATED 29-08-2013

APPELLANTS/PETITIONERS:

1. MARY
W/O.LATE MATHEW, VALEKALATHIL HOUSE, CHALAKUDY
THRISSUR DISTRICT.
2. MINOR ALAN MATHEW AGED 16 YEARS
S/O.LATE MATHEW, REP. BY GUARDIAN MOTHER MARY
VALEKALATHIL HOUSE, CHALAKUDY, THRISSUR DISTRICT.
3. MINOR AMAL MARY MATHEW AGED 15 YEARS
D/O.LATE MATHEW, REP. BY GUARDIAN MOTHER MARY
VALEKALATHIL HOUSE, CHALAKUDY, THRISSUR DISTRICT.

BY ADVS.SRI.V.BINOY RAM
SMT.SAJITHA P.SOMAN

RESPONDENTS/RESPONDENTS:

1. RAJAN
VAKKATH HOUSE, PATTIKKAD, THRISSUR DISTRICT
PIN - 680 652
2. SHAJU,
S/O.KUTTAPPAN, VALLATHADATHIL HOUSE, P.O.PUTHUR
KAINUR DESOM, THRISSUR DISTRICT, PIN - 680 014.
3. THE ORIENTAL INSURANCE CO.LTD,
THIRUVAMBADY DEVASWOM BUILDING, ROUND WEST, THRISSUR
PIN - 680 020.

R3 BY ADV. SRI.R.AJITH KUMAR VARMA (128/84)
BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 19-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.2415 of 2013

Dated this the 19th day of January 2015

JUDGMENT

Ramachandran Nair, J.,

The appeal is filed by the widow and two minor children of the deceased Mathew who succumbed to the injuries sustained in the accident occurred on 5.11.2009. While he was driving a motor cycle through Nenmara-Kollancode public road at a place called Ottappana the offending vehicle a bus bearing Registration No. KL-8-AF-5828 driven by the 2nd respondent hit against the motor cycle and he fell down on the road and sustained serious head injuries. Even though, he was immediately admitted in the hospital, he succumbed to injuries on the same day. The deceased was aged 50 years at the time of the accident and it was claimed that he was working as a manager in Manjooran Poultry Farm, Elavanchery earning Rs. 10,000/- per month during the time of accident.

2. The challenge is against the quantum. As against the

M.A.C.A. No.2415 of 2013 :2:

total claim of Rs. 8 lakh, the Tribunal has awarded a sum of Rs. 4,96,500.

3. The appellant No.1 was examined as PW1 who stated in her examination that the deceased was working as a Manger in a Paultry farm and he was getting remuneration of Rs. 10,000/-. The Tribunal found that there is no documentary evidence to support the same. Accordingly, the tribunal has fixed Rs. 3,500/- as the monthly income. The multiplier taken was 12 and after deducting 1/3 has arrived at the dependency compensation at Rs. 3,36,000/-.

4. Learned counsel for the appellant by relying upon the judgment reported in ***Sanjay Kumar v. Ashok Kumar and Another (2014 KHC 4046 (2014 (5) SCC) 330*** contended for the position that, if the income asserted by claimant is not exorbitant by any standard and reflective of ground realities, such a claim can be accepted even in absence of any documentary evidence. It is therefore, submitted that since the appellant No.1 had explained various aspects in the oral evidence and documentary evidence may not be available as

M.A.C.A. No.2415 of 2013 :3:

far as this type of employment, this Court can refix the remuneration as Rs. 10,000/-.

5. Learned counsel for the appellant submitted that the employer of the deceased was not examined at least to support and corroborate the evidence of PW1. The accident is of the year 2009. In her evidence she has stated that at the time of death, he was working as Manager, Paultry Farm at Ottappana in Palakkad District. They were residing at Kollancode at that time. Now they are residing in Chalakkudy. She is having no employment and the children are minors also.

6. In the light of the evidence of the appellant No.1 given in cross examination that she was meeting the expenses of the family from the amount of Rs. 10,000/- received by the appellant, the question is whether the same can be accepted.

7. In the absence of any corroboratory evidence we have to fix a reasonable amount. We are of the view that an amount of Rs. 6,000/- will be reasonable in the circumstances of the case. Going by the decision reported in ***Sarala Varma v. Delhi Transport Corporation (2010(2) KLT 802)*** the correct

M.A.C.A. No.2415 of 2013 :4:

multiplier is 11. Accordingly, we grant an amount of Rs. 5,28,000/- towards loss of dependency.

8. As regards loss of love and affection, the Tribunal has granted only Rs. 15,000/- to which we grant Rs. 1 lakh. The deceased sustained severe head injuries and the amount awarded towards pain and suffering is Rs. 5,000/- which is too low and we enhance it to Rs. 10,000/-. For loss of estate also we grant a reasonable amount of Rs. 25,000/-.

9. Accordingly, we recompute the compensation in the following manner:

<i>Sl. No.</i>	<i>Heads</i>	<i>Amt. Awarded in Rs.</i>	<i>Modified award in Rs.</i>	<i>Basis</i>
1	Damage to clothings	500	500	
2	Transportation expenses	5000	5000	
3	Medical & miscellaneous	-		
4	Funeral expenses	25000	25000	
5	Extra nourishment	-		
6	Compensation for dependency	336000 (3500x12x12x2/3)	528000	
7	Loss of love and affection	15000	100000	
8	Pain and suffering	5000	10000	
9	Loss of consortium	100000	100000	
10	Loss of estate	10000	25000	
	Total	496500	793500	

M.A.C.A. No.2415 of 2013 :5:

10. Therefore, the total compensation will be Rs. 7,93,500/- (Rupees Seven lakh Ninety three Thousand Five hundred only) which will carry interest at the rate of 9% p.a going by the decision reported in ***Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. And Anr.[(2009)4 SCC 513]***.

11. We maintain the directions issued by the Tribunal with regard to sharing of the amount and other aspects. We permit the first appellant to withdraw her share and the Tribunal will release the same.

The Insurance Company is directed to deposit the amount less the amount already deposited within a period of three months. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-

P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge