

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

MACA.No. 2098 of 2011 ()

AGAINST THE AWARD IN OPMV 867/2008 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL,KOLLAM DATED 17-08-2011

APPELLANTS/PETITIONERS:

1. SEETHAMANI AMMA,
W/O.LATE RAMACHANDRAN PILLAI, KUNNATHU VEEDU
OLAYIL CHERRY, THEVALLY.P.O., KOLLAM.

2. KRISHNA KUMAR,
S/O.LATE RAMACHANDRAN PILLAI, KUNNATHU VEEDU
OLAYIL CHERRY, THEVALLY.P.O., KOLLAM.

3. ANIL KUMAR,
LATE RAMACHANDRAN PILLAI, KUNNATHU VEEDU
OLAYIL CHERRY, THEVALLY.P.O., KOLLAM.

BY ADV. SRI. K.SIJU

RESPONDENT/3RD RESPONDENT:

THE BRANCH MANAGER,
THE ORIENTAL INSURANCE CO.LTD.
KOTTARAKKARA.691 506.

R,R BY ADV. SRI.A.R.GEORGE
R BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.2098 of 2011

Dated this the 12th day of February 2015

JUDGMENT

Ramachandran Nair, J.,

This appeal is filed by the claimants before the Tribunal. They are aggrieved by the inadequacy of compensation consequent to the death of Sri. Gopakumar who was employed as Senior Accountant in the Sub Treasury in Government Service. The accident occurred on 27.6.2006 while he was going to his house on KL-2/W 5323 motor cycle through Anhalummoodu-Kollam public road. At CKP junction, the offending vehicle a Maruthi car bearing Registration No. KL-5/C 2322, which came from the opposite direction, hit the motor cycle. He was taken to the hospital but died on the way.

2. Learned counsel for the appellant submitted that the deceased had obtained job under the Dying in harness Scheme, on the death of his father and the family was fully depending upon the deceased. It is submitted that the 3rd appellant was

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examined as PW1 before the Tribunal.

3. The Tribunal, for assessing compensation, relied upon the salary certificate of the deceased. The same was marked as Ext.X1 and he was having Rs. 7962/- as salary at the time of death. 50% more of the actual salary was added for the future increase in prospects. Following the judgment of the Apex Court in ***Sarala Verma Vs. Delhi Transport Corporation [(2010 (2) KLT 802 (SC))***, total monthly salary for the purpose of assessing compensation was adopted as Rs.11,943/- and 50% was deducted towards personal expenses of the deceased.

4. Learned counsel for the appellant submitted that in paragraph 32 of the **Sarla Verma's case** (supra), it has been held that in case where the family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third. Our attention is invited to the evidence of PW1.

5. In paragraph 7 it is stated that the after the death of

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father, they were depending upon the income of the deceased Gopakumar. Their studies were affected after the death of the father and he obtained a job in a private company. After Gopakumar obtained government job they started efforts for completing the studies. After the death of the brother, their studies had to be discontinued.

6. Learned counsel for the Insurance Company submitted that no details have been produced with regard to the averment that they were studying, had employment in a private company and other details. It is submitted that to get the benefit of paragraph 32, all the details should have been given in evidence. True that PW2 has not been cross examined on this aspect. But the essential details have not been stated in the proof affidavit. In that view of the matter, we will not be justified in adopting 1/3 as personal expenses of the deceased. Therefore, deduction of 50% towards personal expenses is justified. But the multiplier has been adopted is 13 by the Tribunal instead of 17. Going by **Sarla Verma's case** (supra) the correct multiplier is 17 and we adopt the same. For loss of love and affection we

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grant Rs. 1Lakh instead of Rs. 10,000/-. For funeral expenses also we grant Rs. 25,000/- instead of Rs. 2500/- in the light of the decision of the Apex Court reported in Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC)). For pain and suffering of the deceased we grant Rs. 10,000/-, as the Tribunal had not granted any amount towards pain and suffering of the deceased. For loss of estate, we grant an amount of Rs. 50,000/-. The dependency compensation will be $\text{Rs. } 5971 \times 12 \times 17 = 12,18,084/-$. Accordingly, we modify the award as follows:

<i>Sl. No.</i>	<i>Heads of claim</i>	<i>Amount awarded (in Rs.)</i>	<i>Amount modified (in Rs).</i>
1	Loss of earning		
2	Funeral expenses	2500	25000
3	Extra nourishment		
4	Damage to clothing and articles		
5	Transport to the hospital	5000	
6	Medical expenses		
7	Compensation for pain and suffering		10000
8	Compensation for loss of dependency	931476	12,18,084/- (5971x12x17)
9	Compensation for the loss of consortium		
10	For loss of love and affection	10000	100000
11	Compensation for loss of estate	5000	50000

<i>Sl. No.</i>	<i>Heads of claim</i>	<i>Amount awarded (in Rs.)</i>	<i>Amount modified (in Rs).</i>
	Total		1403084

7. Thus the appellants will be entitled to a total compensation of Rs. 1403084/- rounded off to Rs. 14,03080/- which will carry interest at the rate of 9% p.a from the date of petition for the enhanced compensation in the light of the decision of the Apex Court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513. The Insurance Company is directed to deposit the award amount less the amount already deposited within a period of three months. The amount will be apportioned among the appellants in the manner in which the Tribunal has directed.

The appeal is allowed accordingly. The parties will bear their respective costs.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-

P.V.ASHA
(JUDGE)

AL/-

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True copy

P.A to Judge