

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT.JUSTICE P.V.ASHA**

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

MACA.No. 2169 of 2011 ()

**AGAINST THE AWARD IN OP(MV) 587/2010 of M.A.C.T.,KOZHIKODE DATED
24-09-2011**

APPELLANT/PETITIONER:

**P.M.MANUKUTTAN
S/O.APPU, RESIDING AT THIRUNILATH HOUSE, P.O.ARIYALLUR
BANKPADI, MALAPPURAM.**

**BY ADVS.SRI.A.V.M.SALAHUDIN
SMT.P.Y.SHEHEERA**

RESPONDENTS

**1. MAHESH.P
S/O.MANUKUTTAN
RESIDING ATDOOR NO.147/D RAILWAY WAGON
WORKSHOP COLONY, GUNTUPALLI, VIJAYAWADA-520 001.**

**2. BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED
DOOR NO.40-01-09, IST FLOOR, BESIDES TIPSYP TOPY
M.G.ROAD, LABBIPET, VIJAYAWADA.**

R2 BY ADV. SRIP.S.RAMU

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

SMM

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

.....
M.A.C.A. No.2169 of 2011
.....

Dated this the 25th day of March, 2015.

J U D G M E N T

T.R.Ramachandran Nair,J

The wife of the appellant died in an accident. She was aged 52 and was travelling as a pillion rider along with her son, first respondent herein from Kadalundi to Kozhikode on 8-6-2009. She was thrown out of the motorcycle and died while undergoing treatment at MIMS Hospital on 9-6-2009. Rupees five lakhs was claimed as compensation.

2. The Tribunal has granted compensation in the following manner

<i>Heads of claims</i>	<i>Amount claimed</i>	<i>Amount allowed</i>
Transport to hospital	1000	1000
Damage to clothing	1000	1000
Treatment expenses	10000	5000
Funeral expenses	5000	3000
Loss of love and affection	30000	5000
Pain and suffering to victim	40000	10000
Loss of companionship	40000	5000
Loss of estate	Nil	5000
Loss of dependancy	2,50,000	100000
Total		1,35,000/-

3. It was claimed that the deceased was a tailor by profession and the Tribunal awarded the compensation by fixing the monthly income as Rs.3,500/-. The learned Counsel for the appellant submitted that at any rate Rs.4500/- can be taken as monthly income, which was opposed by the learned Counsel for the Insurance Company, by pointing out that there is no evidence to show the profession of the deceased.

4. When there is no clear evidence to prove that she was working as a tailor, we will have to consider her service as a housewife, for which we grant Rs.3,500/- per month as notional income for awarding compensation. Other items of heads of claim which require modification are funeral expenses, loss of companionship and loss of estate. According to us, for funeral expenses Rs.25,000/- is liable to be granted, for loss of companionship we grant an amount of Rs.50,000/-, and for loss of estate we grant an amount of Rs.20,000/-. The appellant was aged 61 years at the time of the accident and the Tribunal adopted the

proper multiplier as 5, which is not justified. Going by the judgment of the Apex Court in **Sarala Verma vs. Delhi Transport Corporation (2012(2) KLT 802)**, the multiplier to be adopted is 11. Therefore, compensation for loss of dependancy will be Rs.3,08,000/- ($3500 \times 12 \times 11 \times 2/3$).

<i>Heads of claims</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount modified</i>
Transport to hospital	1000	1000
Damage to clothing	1000	1000
Treatment expenses	5000	5000
Funeral expenses	3000	25000
Loss of love and affection	5000	5000
Pain and suffering to the victim	10000	10000
Loss of companionship	5000	50000
Loss of estate	5000	20000
Loss of dependancy	100000	308000
Total	1,35,000/-	4,25,000/-

(Rupees four lakhs twenty five thousand only)

5. Therefore, the total compensation will come to Rupees four lakhs twenty five thousand only. It will carry interest at the rate of 9% per annum for the enhanced compensation. The Insurance Company will deposit the

modified amount, less any amount already deposited before the Tribunal, within a period of three months. We permit the appellant to withdraw the amount.

The appeal is allowed as above. The parties shall bear respective costs in the appeal

T.R.RAMACHANDRAN NAIR
JUDGE

P.V. ASHA
JUDGE

smm

