

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 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

MACA.No. 930 of 2010 ()

AGAINST THE AWARD IN OPMV 2001/2002 of MACT, THRISSUR DATED
30.11.2009

APPELLANT(S)/PETITIONER :-

1. PHALGUNAN, S/O.LATE MADHAVAN,
PANIKKASSERY HOUSE, P.O.NJARAKKAL, ERNAKULAM DISTRICT.
2. OMANA, W/O. PHALGUNAN, S/O.LATE MADHAVAN,
PANIKKASSERY HOUSE, P.O.NJARAKKAL, ERNAKULAM DISTRICT.
3. JIBI, S/O. PHALGUNAN, S/O.LATE MADHAVAN,
PANIKKASSERY HOUSE, P.O.NJARAKKAL, ERNAKULAM DISTRICT.
4. JINI, S/O. PHALGUNAN, S/O.LATE MADHAVAN,
PANIKKASSERY HOUSE, P.O.NJARAKKAL, ERNAKULAM DISTRICT.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENT(S)/RESPONDENTS :-

1. BIJOY, PROPRIETOR, LUBE BUSINESS
ASSOCIATE OF BHARATH PETROLEUM, 34/477, KADAVANTHARA.
2. SUNIL THANKAPPAN, S/O. THANKAPPAN,
PURAKKAT HOUSE, MULLAKKANAM, RAJAKKADU.
3. NEW INDIA INSURANCE CO.LTD., 1ST FLOOR,
CHANDRIKA BUILDING, M.G.ROAD, P.O.COCHIN.
ERNAKULAM DISTRICT

(3RD RESPONDENT BEFORE THE TRIBUNAL IS NOT MADE
PARTY HEREIN SINCE HE IS AN UNNECESSARY PARTY)

R1 BY ADV. SRI.A.BALAGOPALAN

SRI.A.RAJAGOPALAN

R3 BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A. No.930 of 2010

Dated this the 22nd day of January, 2015

J U D G M E N T

Ramachandran Nair, J.

The parents and siblings of the deceased are the appellants herein. The deceased was aged 21 years at the time of the accident. He was travelling in a bus bearing registration No.KL-8/F 3852 from Kandanakam to Thrissur. The offending vehicle was a lorry bearing registration No.KL-7/AD 4423. The accident occurred when the bus collided with the lorry. The claimants filed OP(MV) No.2001 of 2002 claiming ₹7,83,200/- as compensation.

2. The case of the applicants was that the deceased was aged 21 years at the time of the accident and was earning ₹4,000/- per month.

3. We have heard the learned counsel on both sides.

4. It is submitted by the learned counsel for the appellants that the Tribunal has gone wrong in adopting a lesser multiplicand and ₹2,500/- as the monthly income of the deceased, since he was a skilled worker. It is also submitted

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that instead of the multiplier of 13, the multiplier to be adopted is at 18 as per the decision in **Sarla Verma v. Delhi Transport Corporation** [2010 (2) KLT 802 (SC)]. Learned counsel also submitted that for treatment expenses, bills have been produced for an amount of ₹57,924/-. But ₹35,763/- alone has been granted on the ground that the certificate issued from the hospital shows that the remaining amount has not been paid.

5. It is also submitted that for loss of love and affection ₹10,000/- and for loss of estate, ₹10,000/- alone have been granted and the Tribunal has granted interest only at the rate of 8%.

6. Learned counsel for the Insurance Company opposed the contentions of the learned counsel for the appellants.

7. As regards the monthly income and occupation of the deceased, Ext.A12 is the salary certificate issued by the Proprietor of Kattukaran Engineering Industries, Elamkulam, Cochin wherein it is certified that he was working under them in the Engineering Workshop as Welder since March, 2001 till 24.3.2002 and he was paid ₹4,000/- per month as salary.

8. The deceased was admitted in the hospital on 24.3.2002 and he died on 2.4.2002. The accident occurred in the year 2002 and therefore, we consider it to be proper to fix a sum of ₹3,750/- as the monthly income being a skilled worker.

9. The dependency compensation will have to be assessed accordingly. Since the deceased was a bachelor, half of the income will have to be deducted for personal expenses. Hence, the compensation towards loss of dependency will be ₹4,05,000/-. It is true that in the certificate given by the hospital, it is stated that out of ₹57,924/-, ₹35,000/- has been paid and ₹22,924/- remain unpaid. As pointed out by the learned counsel for the appellants, since the liability to pay amount is there, the appellants cannot be denied the balance amount.

10. Learned counsel for the insurance company submitted that only the actual amount paid alone be accounted under the head medical expenses. But, since it is shown that ₹57,924/- will be the actual amount as per the final bill, we will be justified in granting the same.

11. Towards pain and suffering ₹10,000/- has been

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granted by the Tribunal. He was hospitalised for 9 days. It is seen from the wound certificate that he had suffered serious wounds including open fracture of clavicle which extended to right shoulder. In the light of these factors, we enhance the compensation towards pain and suffering to ₹25,000/-. For loss of love and affection, ₹1,00,000/- and for loss of estate ₹30,000/- are granted as compensation. The Tribunal has granted ₹5,000/- under the head for transportation and funeral expenses. For transportation expenses, we fix a sum of ₹5,000/- and for funeral expenses, we fix ₹25,000/- as compensation. Accordingly, we modify the award as under :-

Head of claim	Amount awarded by Tribunal	Modified amount
Loss of dependency (3750x12x1/2x18)	195000	405000
Transportation and funeral	5000	30000
Loss of love and affection	10000	100000
Loss of estate	10000	30000
Pain and sufferings	10000	25000
Expenses for treatment	35763	57924
Total	265763	647924 rounded off to 647900

Thus, the appellants will be entitled for a total compensation of **₹6,47,924/- (Rupees Six Lakhs Forty Seven Thousand**

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Nine Hundred and Twenty Four only), which will be rounded off to **₹6,47,900/-**. The enhanced amount will carry interest at the rate of 9% per annum from the date of petition till realisation. The entire amount of compensation will be deposited by the Insurance Company within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal. We permit the appellants 1 and 2 to withdraw the amount and the Tribunal will release the same.

The appeal is allowed accordingly. No costs.

Sd/-
T. R. RAMACHANDRAN NAIR
JUDGE

Sd/-
P.V.ASHA
JUDGE

//TRUE COPY//

P.A. TO JUDGE

Jvt