

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

MACA.No. 1270 of 2009 ()

AGAINST THE AWARD IN OPMV 872/2004 of PRL.M.A.C.T., KOZHIKODE
DATED 01-11-2008

APPELLANT(S)/PETITIONERS:

1. N.NISHA, AGED 25 YEARS,
W/O. LATE A.SATHEESH KUMAR, EDAKKATTU PARAMBA
P.O.MANASSERY, VIA MUKKOM, KOZHIKODE.

2. A.ASWIN, AGED 3 YEARS,
D/O.LATE A.SATHEESH KUMAR, EDAKKATTU PARAMBA
P.O.MANASSERY, VIA MUKKOM, KOZHIKODE.

3. A.KARTHIYANI, AGED 55 YEARS,
W/O.A.VELUKUTTY, EDAKKATTU PARAMBA, P.O.MANASSERY
VIA MUKKOM, KOZHIKODE.

4. A.VELUKUTTY, AGED 63 YEARS,
S/O.PARANGODAN, EDAKKATTU PARAMBA, P.O.MANASSERY
VIA MUKKOM, KOZHIKODE.

BY ADVS.SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENT(S)/RESPONDENTS:

1. SAIGA THANKACHAN, THARANIYIL HOUSE,
P.O.THAMBALAMANNA, THIRUVAMBADI, KOZHIKODE.

2. THE BRANCH MANAGER,
THE UNITED INDIA INSURANCE CO.LTD., AHAMED BUILDING
CHEROOTY ROAD, KOZHIKODE.

R,R2 BY ADV. SMT.P.A.REZIYA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.1270 of 2009

Dated this the 30th day of January, 2015

JUDGMENT

Asha, J.

The appellants are the widow, minor child and parents of the deceased Satheeshkumar, who met with an accident on 12.02.2004. A tipper lorry hit the motorcycle on which the deceased was riding as pillion rider and he sustained severe injuries. He succumbed to the same on the same day.

2. Before the Tribunal it was claimed that the deceased Satheeshkumar was a Carpenter earning a sum of Rs.4,800/- per mensem. The claim petition was filed seeking compensation to the tune of Rs.6 lakhs. The Tribunal awarded a sum of Rs.2,91,000/-. At the same time it was ordered that 10% of the same will be reduced towards contributory negligence.

3. This appeal is filed seeking enhancement of compensation and challenging the finding of the Tribunal regarding contributory negligence and resultant reduction of 10% from the award amount found admissible to the appellants.

4. We heard the learned counsel appearing on either side.

5. The deceased was only a pillion rider and even if contributory negligence was found, it could have been only against the person who was riding the motor cycle and not against a pillion rider. Deceased sustained injuries on collision between two vehicles, for which he was in no way responsible. Therefore, the finding of the Tribunal regarding the contributory negligence and deduction of 10% of compensation from the award amount are incorrect.

6. The Tribunal has reckoned Rs.2,000/- as the monthly income of the deceased as against the claim of the appellants as to Rs.4,800/-. In view of the judgments of the Apex Court in **Syed Sadiq v. Divisional Manager** [AIR 2014 Supreme Court 1052] and **Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd.** [(2011) 13 SCC 236], where the apex court fixed the monthly income in the case of a coolie, vegetable vender, etc involved in accidents of 2004 @ Rs. 4500/-, we are of the view that the income of the deceased can be fixed at Rs.4,500/- per mensem, having regard to the wages prevailing at the relevant time in the State in the case of carpenters, also. It

is seen that there were 4 dependents. Therefore $\frac{1}{4}$ th of the income has to be deducted towards personal expenses. The deceased was at the age of 32 years. Therefore, the correct multiplier is 16, in the place of 17 adopted by the Tribunal. Therefore the compensation under the head of 'loss of dependency' will be Rs.648,000/-(4,500X3/4X12X16). The Tribunal has awarded only a sum of Rs.10,000/- towards loss of consortium, and Rs.2,500/- only towards funeral expenses.No amount is granted towards loss of love and affection. In the light of the judgment of the Supreme Court in **Rajesh v. Rajbir Singh** [2013(3)KLT 89(S.C)], the widow will be entitled to an amount of Rs.1 lakh towards loss of consortium; Rs.25,000/- is admissible towards funeral expenses and Rs.1 lakh is awarded towards loss of love and affection. Similarly the Tribunal has also not awarded any amount towards loss of estate. We award a sum of Rs.30,000/- towards loss of estate. We also enhance the compensation under the head pain and suffering to Rs.10,000/-.

7. Accordingly we modify the award as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of dependency(Rs.4500X12X16X3/4)	Rs.6,48,000.00

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
2	Loss of consortium	Rs.1,00,000.00
3	Loss of love and affection	Rs.1,00,000.00
4	Pain and sufferings	Rs. 10,000.00
5	Transportation	Rs. 1,500.00
6	Funeral expenses	Rs. 25,000.00
7	Loss of estate	Rs. 30,000.00
	TOTAL	Rs.9,14,500.00

(Rupees Nine lakhs fourteen thousand five hundred only)

The appellants will be entitled to a total compensation of Rs.9,14,500/- (Rupees Nine lakhs fourteen thousand five hundred only). The enhanced amount will carry interest @9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months, less the amount already deposited before the Tribunal. Out of the total compensation, 50% will be disbursed to the widow. From out of the remaining 50%, the minor child is entitled to 30% share and that will be kept in fixed deposit in the name of the minor child in any nationalised bank till he attains majority. He can withdraw the amount as and when he attains majority. The remaining 20% will be disbursed to the parents in equal shares. Parties are at liberty to withdraw the respective shares due to them accordingly.

The Court Fee in deficit towards the total awarded amount shall be recovered by the Tribunal before disbursement.

The appeal is allowed accordingly. No costs.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge