

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

MACA.No. 2237 of 2011 ()

**AGAINST THE AWARD IN OP(MV) 1359/2004 OF ADDITIONAL MOTOR ACCIDENTS CLAIMS
TRIBUNAL, THALASSERY DATED 23-12-2010**

APPELLANTS/PETITIONERS:

- 1. N.P.MAMMOOTTY
S/O.LATE ABU, RAMLA COTTAGE, ANJARAKANDY AMSOM
KOLATHUMALA DESOM, P.O.ANJARAKANDY, THALASSERY
KANNUR.**
- 2. K.E.N.RAMLA, AGED 45 YEARS
M/O.LATE SHAMSHEER & W/O.N.P.MAMMOOTTY
RAMLA COTTAGE, ANJARAKANDY AMSOM, KOLATHUMALA DESOM
P.O.ANJARAKANDY, THALASSERY, KANNUR.**
- 3. K.E.N.SHAMSHEELA AGED 32 YEARS
D/O.MAMMOOTTY, RAMLA COTTAGE, ANJARAKANDY AMSOM
KOLATHUMALA DESOM, P.O.ANJARAKANDY, THALASSERY
KANNUR.**
- 4. K.E.N.NOUSHEER, AGED 25 YEARS
S/O.MAMMOOTTY, STUDENT, RAMLA COTTAGE
ANJARAKANDY AMSOM, KOLATHUMALA DESOM, P.O.ANJARAKANDY
THALASSERY, KANNUR.**
- 5. K.E.N.SHABEER, AGED 23 YEARS
S/O.MAMMOOTTY, STUDENT, RAMLA COTTAGE
ANJARAKANDY AMSOM, KOLATHUMALA DESOM, P.O.ANJARAKANDY
THALASSERY, KANNUR.**
- 6. K.E.N.SHIHAJ, AGED 22 YEARS
S/O.MAMMOOTTY, STUDENT, RAMLA COTTAGE
ANJARAKANDY AMSOM, KOLATHUMALA DESOM, P.O.ANJARAKANDY
THALASSERY, KANNUR.**

BY ADV. SRI.C.K.SREEJITH

MACA.No. 2237 of 2011 ()

RESPONDENTS/RESPONDENTS:

1. NATARAJAN
S/O.MARASWAMY, 4/61, PASUR
ANOOR MUTHALYAR COLONY, AVANTHADHI DESOM, P.O.PASUR
ANOOR (VIA) COIMBATORE-641653
TAMILNADU (DRIVER OF LORRY TN 39 F 9039)

2. MALLIKA DEVI
2/130, SEGATHURAI, PALLADAM
KADAMBADI.P.O., COIMBATORE DISTRICT, TAMIL NADU
PIN-641 105. (OWNER OF THE LORRY TN 39 F 9039)

3. M/S.NEW INDIA INSURANCE COMPANY LTD.,
11, 19, 20 GOVERNMENT ARTS COLLEGE ROAD
COIMBATORE-641 018, TAMIL NADU (INSURER).

R3 BY ADV. SRI.ZIYAD RAHMAN(B/O)
R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SHG/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.2237 of 2011

Dated this the 1st day of September, 2015

J U D G M E N T

Ramachandran Nair, J.

This appeal is filed by the parents and brothers and sisters of the deceased Shamseer who died in a motor vehicle accident. The petitioners are aggrieved by the inadequacy of the compensation granted.

2. The accident occurred on 13.3.2004 at Varapuzha in Ernakulam District. Along with certain others he was travelling in a car bearing registration No.KL-13/K 7580 and the offending vehicle is a lorry bearing registration No.TN-39/F 9039. Apart from the deceased another occupant also suffered injuries and two claim applications were filed which were jointly tried.

3. The main grievance raised by the learned counsel for the appellants is the one regarding the fixation of monthly income. It is also submitted that the adoption of multiplier is not in tune with the judgment in **Sarla Varma**

v. Delhi Transport Corporation [2010 (2) KLT 802

(SC). It was claimed that he was working as a Salesman in a company in Sultanate of Oman and he was earning monthly salary of RO.150.000 (Rials Omani One hundred fifty only). Ext.A5 is the document produced in support of the above. Learned counsel for the appellants relied upon various judgments to contend for the position that the document certified by the Embassy is acceptable in evidence. We find force in the said submission also. In Ext.A5 it is certified that the deceased was holding Indian Passport B-1725719 and is working with the concern namely ABO Najat Trading in the capacity of Food Supply Salesman/General and he is drawing a monthly salary of RO150.000.

4. The Tribunal did not accept the document even though the same is attested by the concerned officials of the Embassy of India, Muscat.

5. Learned counsel for the appellants submitted that the said approach was not correct. The Tribunal has taken

the monthly income as Rs.3,000/- as a notional income. He was aged 24 years at the time of the accident.

6. We find from Ext.A5 that it has been attested by the Embassy of India, Muscat by a competent authority. The same is therefore acceptable and it will be safe to rely upon the same document. Going by the conversion of Oman RO for the relevant period it was equal to Indian Rs.118.42. Hence the monthly salary which was being earned by him will come to Rs.17,700/-. But as regards the permanent nature of the employment there is no evidence. Therefore nothing could be added towards it for the future prospects of the deceased. Going by the visa issued as seen from the entry in the passport he obtained visa on 29.10.2003 which was to expire on 28.10.2005. Whether the employment was eligible to be renewed also is not clear as there is no evidence on this aspect. Apart from the same as regards the expenditure towards his food, accommodation etc. we will have to reduce a certain percentage. Going by the judgment in Sarla Varma's case (cited supra) as he was a

bachelor 50% will have to be reduced from Rs.17,700/- towards personal expenses also.

7. Learned counsel for the Insurance Company submitted that in view of the fact that other expenses will also be there like the one pointed out earlier, if at all this court adopts the monthly income as disclosed in Ext.A5 a further reduction is required to balance various aspects. We find force in the same. As no evidence is available whether he was having a free accommodation and food was also being provided by the employer, we will be justified in reducing a reasonable amount further from the amount arrived at. Therefore we fix Rs.6,000/- as the monthly remittance he would have been contributing to the appellants. The multiplier adopted by the Tribunal is also not correct as the Tribunal has gone by the average age of the parents. In the judgment in Sarla Varma's case (cited supra) it has been held that age of the deceased will have to be reckoned for fixing the multiplier. Even though the learned counsel for the Insurance Company submitted that

the average age of the parents will have to be reckoned we cannot agree. A Division Bench of this court in **Annamkutty v. United India Insurance Company Ltd. [2013 (4) KLT 160]** held that the age of the deceased that should be taken into consideration and not that of the dependants. Even though the learned counsel relied upon the judgment in **Manissery Mariyumma & Ors. v. A. Govinda & Ors. [2013 (3) KHC 479]** it was on a review petition filed by the parties and in the light of the judgment in **Annamkutty v. United India Insurance Company Ltd. [2013 (4) KLT 160]** and the judgment in Sarla Varma's case (cited supra) we prefer to follow the same. Therefore the multiplier as far as this case will be 18.

8. For loss of love and affection Rs.10,000- has been granted by the Tribunal and for funeral expenses what is granted by the Tribunal is only Rs.4,000/-. The appellant will be entitled for a higher amount on these items. We fix an amount of Rs.15,000/- towards funeral expenses and Rs.1 lakh towards loss of love and affection, since the

appellants, including the parents have lost their son at the young age and brothers and sisters have lost the love and care of their deceased brother. Therefore, we re-fix the compensation in the following manner:

Head of claim	Amount re-fixed in Rs.
Loss of dependency	6000x12x18 1296000
Pain and suffering	10000
Loss of love and affection	100000
Transportation	5000
Loss of estate	35000
Funeral expenses	15000
Total	14,61,000 (Rupees Fourteen lakhs sixty one thousand only)

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the

appellants will be entitled for the release of the amount.

30% of the enhanced compensation with interest thereon will be shared by the parents and the remaining 40% with interest thereon will be shared equally by the other claimants.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/