

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

MACA.No. 1010 of 2010 ()

**AGAINST THE AWARD IN OPMV 1063/1999 OF ADDITIONAL MOTOR ACCIDENTS CLAIMS
TRIBUNAL, MAVELIKKARA DATED 17-01-2009**

APPELLANTS/PETITIONERS:

- 1. MARIYAMMA, SALLY BHAVANAM, PALLICKAL KIZHAKKE MURI,
THEKKEKKARA P.O.**
- 2. SARASAMMA THOMAS, SALLY BHAVANAM,
PALLICKAL KIZHAKKE MURI, THEKKEKKARA P.O.**
- 3. SAIJU MATHEW, SALLY BHAVANAM,
PALLICKAL KIZHAKKE MURI, THEKKEKKARA P.O.**
- 4. SARAMMA VARGHESE, SALLY BHAVANAM
PALLICKAL KIZHAKKE MURI, THEKKEKKARA P.O.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.SURYA SASI**

RESPONDENTS/RESPONDENTS:

- *1. GOPI, S/O. VASU, ASANMURIYIL VEEDU,
KAPPIL MEKKUM MURI KRISHNAPURAM FROM GIRISH BHAVANAM MEMANA
MURI, OACHIRA.[DELETED]**
- *2. B.INDIRA, SUNDARA BHAVANAM, KRISHNAPURAM P.O.
KAYAMKULAM [DELETED]**

**[RESPONDENT NO.1 AND 2 ARE DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE APPELLANTS AS PER ORDER DATED 11.03.2015 IN IA 708/15 IN
MACA.No. 1010 of 2010.]**

- 3. NEW INDIA INSURANC CO.LTD. REP. BY ITS
DIVISIONAL MANAGER, COCHIN.**

R3 BY ADV. SRI.K.C.SANTHOSHKUMAR

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
shg/-**

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

M.A.C.A. No.1010 of 2010

Dated this the 25th day of May, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellants are respectively the widow, children and mother of Sri. A.V. Varghese, who died in a motor vehicle accident on 10.04.1999. The accident occurred at 10.45 a.m. and he died on the same day while undergoing treatment in NSS Medical Mission Hospital, Pandalam. He was travelling in a private bus bearing registration No.KRA 6624 by name Rajaram. Near Mar Thoma Church at Ulavukadu, when the driver applied brake suddenly, the deceased was thrown away from the bus and grave injuries were caused to him.

2. The total amount of compensation claimed is Rs.4 lakhs. The Tribunal has awarded an amount of Rs.2,10,900/- with interest at the rate of 7.5% per annum. While awarding compensation, the Tribunal has fixed the

monthly income at Rs.2,500/-. It was contended that the deceased was a rubber tapper and was collecting latex under M/s. Jacob Kottarathil Vilayil, Pallickal East. The Tribunal after assessing the evidence fixed the amount at Rs.2,500/-, which according to the learned counsel for the appellants do not reflect the amount of wages a rubber tapper was earning during the said period. PW1 was examined in support of the claimants. The Tribunal did not accept the case fully since the employer has not been examined. We are of the view that a reasonable assessment will have to be made for fixing a just and fair compensation.

3. The learned counsel for the Insurance Company submitted that there is no cause for any substantial increase in the monthly income fixed. The accident was of the year 1999. After considering the fact that rubber tappers would earn more among the wage earners viz. daily labourers at that time, we fix an amount of Rs.Rs.3,000/- as monthly wages. The claimants are four in number and therefore $\frac{1}{4}^{\text{th}}$ shall have to be deducted for personal

expenses of the deceased. He was at the age of 50 and hence the multiplier going by the decision of the Apex Court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** will be 11, which we adopt.

4. The learned counsel sought for further enhancement towards loss of consortium, loss of love and affection and funeral expenses. It is also pointed out that no amount has been granted for loss of estate. In the light of the decision in **Rajesh & Ors. v. Rajbir Singh [2013 (3) KHC 212 (SC)]** and other subsequent decisions, the appellants are entitled to be granted more amounts towards loss of consortium, loss of love and affection and funeral expenses. For pain and suffering Rs.10,000/- has been granted by the Tribunal, which we confirm. We are also of the view that a reasonable amount ought have been granted on the remaining heads. Accordingly, we refix the compensation as shown below:

Head of claim	Amount awarded in rupees
Pain and suffering	10,000/-
Loss of love and affection	1,00,000/-
Loss of consortium	1,00,000/-
Transport to hospital	2,500/-
Damage to clothing	400/-
Funeral expenses	25,000/-
Loss towards dependency	2,97,000/-
Loss of estate	25,000/-
Total	5,59,900/- (Rupees five lakh fifty nine thousand nine hundred only)

5. Since the claim is only for Rs.4 lakhs, and as we granted compensation more than the amount claimed, in the light of the decision in Rajesh's case (supra) there will not be any bar in granting just and fair compensation irrespective of the amount claimed. But the appellants are liable to pay balance court fee for the amount granted by this court. It will be recovered by the Tribunal from the amount deposited by the Insurance Company pursuant to the judgment of this court.

6. Accordingly, the total compensation is fixed as

Rs.5,59,900/- and we grant interest at the rate of 9% per annum for the enhanced compensation from the date of filing of the petition till realisation.

7. The amount will be apportioned to the same ratio as fixed by the Tribunal. There will be a direction to the Insurance Company to deposit the amount of compensation, less the amount already deposited before the Tribunal, within a period of three months and we permit the claimants to withdraw the amount when the amount is deposited by the Insurance Company. The parties will suffer costs in the appeal.

The appeal is accordingly allowed.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/