

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. 1353 of 2009 ()

**AGAINST THE AWARD IN OPMC 2644/2005 of MOTOR ACCIDENTS CLAIMS
TRIBUNAL ,KOZHIKODE DATED 13-11-2008**

APPELLANTS/PETITIONERS:

- 1. USHA, W/O.(LATE) DEVADASAN, AGED 31 YEARS
ADUKKATH HOUSE, P.O.MUTTANCHERRY, NARIKUNI (VIA)
KOZHIKODE-673 585.**
- 2. VIJULDAS (MINOR), S/O.DEVADASAN,
AGED 13 YEARS, ADUKKATH HOUSE, P.O.MUTTANCHERRY
NARIKUNI (VIA), KOZHIKODE-673 585.
REPRESENTED BY HIS MOTHER, IST PETITIONER, USHA.**
- 3. DILSHA (MINOR), D/O.DEVADASAN,
AGED 7 YEARS, ADUKKATHU HOUSE, P.O.MUTTANCHERRY
NARIKUNI (VIA), KOZHIKODE-673 585.
REPRESENTED BY HIS MOTHER, IST PETITIONER, USHA**

BY ADV. SMT BINDU GEORGE

RESPONDENT(S)/RESPONDENTS:

- 1. MUHAMMED P.M., S/O.HUSSAIN,
11/53 AM, PUTHUKKUDY HOUSE, P.O.KANNIPARAMBA
KOZHIKODE.**
- 2. THE NEW INDIA ASSURANCE CO.LTD.,
BRANCH OFFICE, TRIPURI BUILDINGS, EAST NADAKKAVU
KOZHIKODE.**

R,R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTIL

**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.1353 of 2009
.....

Dated this the 25th day of March, 2015.

J U D G M E N T

P.V. Asha, J

- The appellants are the widow and two children of deceased Devadasan who met with an accident on 24-8-2005. While the deceased was walking through the side of Mavoor road, a motor cycle hit him down causing severe injuries. He succumbed to the injuries on the same day.

2. Claim petition was filed seeking compensation of Rs.4,00,000/-. But the Tribunal awarded a sum of Rs.2,53,666/- only. This appeal is filed seeking enhancement of compensation.

3. We heard the learned Counsel appearing for both sides.

4. The Tribunal reckoned the income of the

deceased as Rs.22,000/- per year. This is a case where the first appellant got herself examined as PW1 and deposed that the deceased was earning Rs.200/- per day. There was no evidence to the contrary adduced by the opposite side. The accident occurred in the year 2005. The deceased was working as a Mason. The claim that he was earning Rs.200 per day cannot be said to be excessive. Therefore, we reckon the income as Rs.5,000/- per month, in view of the fact that there would not be work on all 30 days. The compensation awarded by the Tribunal towards loss of dependency is Rs.2,34,666/-. The deceased was aged 36 years. The proper multiplier is 15. $\frac{1}{3}^{\text{rd}}$ of income is deducted towards his personal expenses. Therefore, the compensation under the head of loss of dependency will come to Rs.6,00,000/- ($5000 \times 12 \times 15 \times \frac{2}{3}$). The Tribunal has awarded a sum of Rs.10,000/- under the head of loss of consortium, an amount of Rs.2,500/- towards funeral expenses, a sum of Rs.5,000/- towards pain and suffering and no amount has been awarded towards loss of love and affection. In the

light of the judgment in **Rajesh & others vs. Rajbir Singh & others (2013 (3) KLT 89(SC))**, the claimants are entitled to Rs.1,00,000/- under the head of loss of consortium; Rs.1,00,000/- towards loss of love and affection and Rs. 25,000/- towards funeral expenses. We enhance the compensation towards pain and suffering to Rs.10,000/- and grant Rs.35,000/- towards loss of estate.

5. The Tribunal has found that the deceased was under the influence of Alcohol and deducted 10% for contributory negligence. It is a case where the deceased was a pedestrian. The learned Counsel for the appellant pointed out that the consumption of alcohol is not proved, based on any medical evidence or analysis. It is merely on the basis of the observation, that there was a sour smell of Alcohol from the contents of stomach, contained in the post mortem certificate that the Tribunal arrived at a finding that the deceased was under the influence of alcohol and hence he was negligent. As far as a pedestrian is concerned, there cannot be any contributory negligence even assuming that there was

smell of Alcohol. Moreover, in the absence of any medical evidence or reliable evidence adduced by the opposite side to prove the influence of alcohol or any contributory negligence on the part of the deceased, we are of the view that the finding of the Tribunal is without any basis. Therefore, we vacate the same. The appellants will be entitled to the entire amount of compensation, that is Rs.8,71,500/-, without any deduction. The award passed by the Tribunal is modified as follows.

<i>Heads of claims</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount modified</i>
Dependency	234666	600000 (5000x12x15x2/3)
Loss of consortium	10000	100000
Pain and sufferings	5000	10000
Funeral expenses	2500	25000
Transportation	1500	1500
Loss of love and affection		100000
Loss of estate		35000
Total		8,71,500/-

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition. The Insurance Company will deposit the amount within three

months from the date of receipt of a copy of this judgment.

6. Out of the total compensation, the widow is entitled to 50% and the remaining 50% will be to the appellants 2 and 3 in equal shares. The share due to the third appellant, who is a minor shall be kept in fixed deposit in a nationalised bank till she attains majority. The other appellants can withdraw their share immediately on deposit by the Tribunal.

7. The court fee, if any, in deficit shall be recovered till the amount is deposited by the insurance company.

Appeal is allowed accordingly and the parties shall suffer their respective costs.

T.R.RAMACHANDRAN NAIR
JUDGE

P.V. ASHA
JUDGE

smm

