

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

MACA.No. 167 of 2008 ()

AGAINST THE AWARD IN OPMV 88/1999 of M.A.C.T., PUNALUR DATED
04-12-2006

APPELLANTS/PETITIONERS:

1. DEVAKI AMMA, AGED 43, D/O. DRAUPATHI
ANTHARJANAM, MELAYUZHITHRA PALLIYILLAM, ELAMAD VILLAGE
KOTTARAKKARA TALUK, W/O. DECEASED, VISHNU NAMPOOTHIRI.

2. SALINI, AGED 19,
MELAYUZHITHRA PALLIYILLAM, ELAMAD VILLAGE
KOTTARAKKARA TALUK, D/O. DECEASED.

3. SYAMINI, AGED 13, (MINOR),
MELAYUZHITHRA PALLIYILLAM, ELAMAD VILLAGE
KOTTARAKKARA TALUK, D/O. DECEASED.

4. SAVITHRI ANTHARJANAM, AGED 63,
MELAYUZHITHRA PALLIYILLAM, ELAMAD VILLAGE
KOTTARAKKARA TALUK, (M/O. DECEASED)

BY ADVS.SRI.THOMAS ABRAHAM
SRI.DIPU.R
SMT.MERCIAMMA MATHEW

RESPONDENTS/RESPONDENTS:

1. SHAJI, S/O. K.C.EPPAN,
SHIJU SADANAM, MANNADY P.O., ADOOR
PATHANAMTHITTA. (REGD. OWNER AND DRIVER OF KL-3B-
2194 TEMPO-MDL-PA-598/89, BADGE NO.PA-202191)
(DELETED).

2. THE BRANCH MANAGER,
ORIENTAL INSURANCE COMPANY LTD., P.B.NO.656
VIJAYANAGAR BUILDING, PULAMON, KOTTARAKKARA
POLICY NO.1999-1530, VALID FOR 24.6.1998 TO
25.6.1999.

* RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF
THE APPELLANT VIDE ORDER DATED 18.11.2013 IN I.A.NO.2993/2013

R2 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.167 OF 2008

Dated this the 23rd day of March, 2015

JUDGMENT

Asha, J.

The appellants are the mother, widow and children of deceased Vishnu Nampoodiri who met with an accident on 22.10.1998 while riding his scooter. The scooter he was riding was hit by a lorry causing fatal injuries to him. He was taken to the Medical College Hospital, Thiruvananthapuram and after 8 days of treatment in the Intensive Care Unit, he succumbed to the injuries on 29.10.1998.

2. The claim petition was filed seeking compensation of ₹18 lakhs. The Tribunal awarded a sum of ₹ 5,79,426/-. This appeal is filed seeking enhancement of compensation aggrieved by the inadequacy on various grounds.

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

4. The deceased was working as an Assistant Development Officer in the Rubber Board. He was drawing a salary of ₹ 9,275/-.

The Tribunal reckoned the net salary of ₹4,238/- only after deducting the contributions under various heads and after deducting 1/3 towards personal expenses, the compensation granted under the head of loss of dependency was ₹ 5,42,464/-. The Salary Certificate Ext.A12 shows that the deceased was drawing a sum of ₹9,275/- per month. The Tribunal ought to have reckoned the entire salary for computing the compensation under the head of loss of dependency, instead of taking the net salary. Therefore, we take the salary of ₹ 9,275/-. Since the deceased was in the age group of below 50, 50% of the same has to be added towards future prospects. Thus the income has to be reckoned as ₹13,912.5/-. The annual income will come to ₹1,66,950/-. If 10% of the same is deducted towards income tax, the same will come to ₹1,50,255/-. The deceased was aged 39 years. Therefore, the proper multiplier to be adopted is 15. Since there were four dependents, $\frac{1}{4}$ of the same has to be deducted towards personal expenses. Thus the compensation under the head of loss of dependency will come to ₹16,90,369/- ($150255 \times 15 \times \frac{3}{4}$).

5. The Tribunal has awarded a sum of ₹10,000/- alone towards pain and suffering. It is seen that the deceased had to undergo

treatment in Intensive Care Unit for 8 days. Therefore, we enhance the same to ₹20,000/-. The Tribunal has awarded a sum of ₹10,000/- alone towards loss of love and affection and another ₹10,000/- towards loss of consortium. In the light of the judgment of the Apex Court in **Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC)**, we enhance the same to ₹1,00,000/- each. Towards funeral expenses, we award a sum of ₹25,000/- and towards loss of estate, a sum of ₹50,000/- is awarded.

6. Accordingly, the award of the Tribunal is modified as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	1690369
Pain and suffering	20000
Loss of love and affection	100000
Loss of consortium	100000
Funeral expenses	25000
Loss of estate	50000
Transportation	1000
Medical expense	3962
Total	1990331 Round off to ₹19,90,330/- (Rupees nineteen lakhs ninety thousand three hundred thirty only)

7. It is seen that there was a delay of 1503 days in filing the appeal. It is made clear that the Insurance Company will not be liable to pay interest for the above period. The enhanced compensation will carry interest @ 9% per annum from the date of petition, subject to the above direction. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. If there is any deficit in court fee, the same shall be recovered by the Tribunal before disbursing the amount to the appellants. Out of the compensation awarded, ₹ 1,00,000/- shall be given to the mother and 50% of the remaining shall be given to the widow and 25% each to the children.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.VASHA, JUDGE