

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

MACA.No. 1558 of 2009 ()

AGAINST THE AWARD IN OPMV 565/2005 of M.A.C.T.,
KOZHIKODE DATED 30-09-2008

APPELLANT(S)/PETITIONERS:

1. P.SALEEM, AGED 56 YEARS, SON OF P.MAYIN,
2. V.SUHARA, AGED 43 YEARS, WIFE OF
P.SALEEM,
3. P.FATHIMA SOUJATH, AGED 27 YEARS,
DAUGHTER OF P.SALEEM,
4. P.AFSATH, AGED 22 YEARS, DAUGHTER OF
P.SALEEM,
5. P.FOUSIA, AGED 20 YEARS, DAUGHTER OF
P.SALEEM,
6. P.AFZAL, AGED 18 YEARS, SON OF P.SALEEM,

ALL THE APPELLANTS ARE RESIDING AT PALAKKAL HOUSE,
THANNIINKAL PARAMBA, PANNIYANKARA, KOZHIKODE-
673003.

BY ADVS.SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENT(S)/RESPONDENTS:

1. K.P.ANZAR, AGED 30 YEARS, SON OF MAMU,
RESIDING AT KUNHALI PARAMBA, P.O. ARAKINAR, KOZHIKODE.

2. THE UNITED INDIA INSURANCE CO.LTD.,
DIVISIONAL OFFICE-1, KALLAI ROAD, KOZHIKODE.

R,R2 BY ADV. SRI.A.A.MOHAMMED NAZIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.1558 of 2009

Dated this the 22nd day of January, 2015

JUDGMENT

Asha, J.

The appellants are the parents and siblings of deceased Faizal, who succumbed to injuries sustained in an accident on 05.12.2004. He was a pillion rider on a motorcycle bearing Reg.No.KL-11/T-8976 which hit against a divider and involved in the accident.

2. The motorcycle was having an insurance coverage with the 2nd respondent. Claim petition was filed seeking compensation to the tune of Rs.5 lakhs. The Tribunal awarded a sum of Rs.1,88,999/- and exonerated the Insurance Company on the ground that a pillion rider is not covered by the policy.

3. This appeal is filed seeking enhancement in compensation. The learned counsel for the appellants pointed out that the policy with insurance company covers the pillion

rider also. The learned Counsel for the Insurance Company fairly conceded the same. Therefore, we find that the owner of the motorcycle is to be indemnified by the 2nd respondent Insurance company and hence vacate the finding of the Tribunal exonerating it from payment.

4. The deceased was 22 years at the time of the accident. He was working as an automobile mechanic. The claim petition was filed claiming that he was earning a sum of Rs.6,500/- per mensem on his engagement as an automobile mechanic. The Tribunal reckoned his annual income as Rs.16,000/- and adopted the multiplier of 15. Going by the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** [2010(2) KLT 802 (S.C)], multiplier is to be fixed on the basis of the age of the deceased and the proper multiplier is 18. The learned Counsel for the Insurance Company raised a contention that the multiplier is to be adopted with reference to the age of the dependants. But we find that this Court as well as Hon'ble Supreme Court has time and again, held that it should be based on the age of the deceased. (**Amrit Bhanu Shali & others V National Insurance Co & others** [2012 ACJ 2002], **Annamkutty V Manager, United India Insurance Co. &**

another [2013(4) KLT 160].

5. Regarding the income, we find that the deceased was a qualified automobile mechanic. In the light of the judgment of the Supreme Court in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd.** [(2011) 13 SCC 236] as well as **Minu Rout V Satya Pratyudmna Mohapatra & others** [(2013) 10 SCC 695], we reckon his income @ Rs.5,000/- per mensem, having regard to the fact that he was a skilled labourer in accordance with the wages prevailed at the relevant time. Since the deceased was a bachelor, 50% of the income has to be deducted towards personal expenses. Therefore the compensation under the head loss of dependency is recalculated as Rs.5,000X12X18X1/2, which will come to Rs.5,40,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards love and affection and a sum of Rs.2,500/- towards funeral expenses. The parents of the deceased, aged 56 and 43 years lost their son. Similarly the siblings, aged 27, 22, 20 and 18 years lost their brother. Hence we award a sum of Rs.1 lakh towards love and affection. Similarly towards funeral expenses, we enhance the amount to Rs.25,000/-, going by the decision of the Supreme Court in **Rajesh v. Rajbir Singh** [2013(3) KLT 89 (S.C)].

The award is accordingly modified as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Transport to hospital	Rs. 1,500.00
2	Funeral expenses	Rs. 25,000.00
3	Pain and suffering	Rs. 10,000.00
4	Loss of dependency	Rs. 5,40,000.00
5	Expenses incurred for treatment	Rs. 5,000.00
6	Loss of love and affection	Rs. 1,00,000.00
	Total	Rs. 6,81,500.00

(Rupees Six lakhs Eighty one thousand
and five hundred only)

12. The appellants will be entitled to a total compensation of Rs.6,81,500/- (Rupees Six lakhs Eighty one thousand and five hundred only). This 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 from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimants can withdraw the amount. Out of the above amount, 50% shall be disbursed to the parents and the rest among the siblings of the deceased in equal shares.

13. The Court Fee 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