

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 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

MACA.No. 403 of 2008 ()

AGAINST THE AWARD IN OPMV 339/1997 of ADDL.D.C.-II & MACT, MAVELIKKARA
DATED 13-02-2007

APPELLANTS/PETITIONERS::

1. MARIYAMMA SHAJI
KALLIKADAVU, EREZHA NORTH, CHETTIKULANGARA.

2. SHEETHAL M.SHAJI (MINOR, REP.BY FIRST
APPELLANT GUARDIAN AND NEXT FRIEND).

3. JOHN SHAJI (MINOR, REP. BY FIRST
APPELLANT GUARDIAN AND NEXT FRIEND)
CHETTIKULANGARA.

4. THANKAMMA JOHN,
EREZHA NORTH, CHETTIKULANGARA.

BY ADV. SRI.K.SASIKUMAR

RESPONDENT(S)/RESPONDENTS::

1. JAYAPPAN
GURUPURAM, SOUTH ARYADU, ALLEPPEY. (DELETED)

2. DINESAN, S/O. KESAVAN,
BHAVANA, THOTTAPPALLY P.O., ALAPPUZHA.

3. NEW INDIA ASSURANCE CO. LTD.,
REPRESENTED BY ITS DIVISIONAL MANAGER
DIVISIONAL OFFICE, KOCHI.

(R1 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA 3898/2014
DT. 20.12.2014)
R,R3 BY ADV. SRI.P.G.GANAPPAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.403 of 2008

Dated this the 1st day of June, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred against the award dated 13.2.2007 made in O.P.(MV) No.339/1997 on the file of the Motor Accidents Claims Tribunal, Mavelikkara. The appellants are the wife and children of deceased Shaji. The case in a nutshell is that on 28.2.1997 at about 3.45 p.m. while the deceased Shaji was travelling as a pillion rider on a motor bike bearing Reg. No.KRA 4297, the vehicle met with an accident and in that accident he succumbed to the injuries.

2. The case of the appellants is that the deceased was working as a conductor in Kerala State Road Transport Corporation, drawing a monthly salary of Rs.4,000/-. Alleging negligence on the part of the driver of the lorry involved in the above said accident, a claim petition was filed claiming a total compensation of Rs.15 Lakhs. The Tribunal awarded a total sum of Rs.4,46,750/-.

3. The case put-forward by the appellants before us is that even though the deceased was drawing a monthly salary of Rs.2,708/-, the Tribunal only considered Rs.2,000/- for calculation of compensation on the head of dependency. It is the submission made before us that when the accident occurred, the deceased was aged only 30 years and no enhancement in the case of salary was taken as held in the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802).

4. Ext.A5 is the service particulars of deceased Shaji which is issued by the Assistant Transport Officer, Mavelikkara. It shows that his total monthly emoluments was Rs.2,708/-. He was aged 30 years and the multiplier available is 17 and 1/4th can be deducted from the income for personal expenses. Thus, accepting his salary as evident from Ext.A5 and also giving an increase of 50%, the following reassessment is made in the case of dependency compensation:

$$\text{Rs.4062/-} \times 12 \times 17 \times \frac{3}{4} = \text{Rs.6,21,486/-}$$

It can be seen that the Tribunal granted only a sum of Rs.15,000/- towards loss of love and affection and only a sum of Rs.10,000/-

towards loss of consortium. Towards funeral expenses also a sum of Rs.3,000/- alone is seen allowed. It is also seen that no amount is awarded for loss of estate. In view of the decision of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89) an amount of Rs.1 Lakh each can be awarded for loss of consortium and loss of love and affection. An amount of Rs.25,000/- can be awarded for funeral expenses. A sum of Rs.50,000/- can be granted for loss of estate.

Thus, the total compensation is refixed in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Loss of dependency	408000	621486
Transportation charges	750	1500
Funeral expenses	3000	25000
Pain and suffering	10000	10000
Loss of consortium	10000	100000
Loss of love and affection	15000	100000
Loss of estate		50000
total		907986 (rounded off to Rs.9,08,000/-)

(Rupees Nine lakhs and eight thousand only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition. From the enhanced amount,

Rs.25,000/- with its interest from the date of petition will be entitled to 4th appellant, who is the mother of the deceased. From the balance amount Rs.1 Lakh each with interest from the date of petition will be disbursed to appellants 2 and 3 and the entire balance amount with its interest from the date of petition will be disbursed to the first appellant. The appellants are permitted to withdraw the amount on deposit.

The appeal is allowed as above. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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