

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

MACA.No. 1458 of 2010 ()

AGAINST THE AWARD IN OPMV 919/2005 of M.A.C.T., PERUMBAVOOR DATED
17-03-2010

APPELLANTS/CLAIMANTS:

1. SIJI, W/O ABDUL GAFOOR
VARANATTU HOUSE, KALLERIMOOLA, S.VAZHAKKULAM.

2. PATHUMMA, W/O.ABDUL KHADER,
VARANATTU HOUSE, KALLERIMOOLA, S.VAZHAKKULAM.

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENTS/RESPONDENTS:

1. ALIAS A.K.,
S/O KURIAKOSE, ATTUKARAN, MADATHIPARAMBIL HOUSE,
OORAKKATTU,
KIZHAKKAMBALAM P.O., PIN-683362.

2. NATIONAL INSURANCE COMPANY LIMITED,
THRIPUNITHURA BRANCH, TRIPUNITHURA P.O., PIN-682301.

R2 BY ADV. SMT.RAJI T.BHASKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1458 OF 2010

Dated this the 2nd day of June, 2015

JUDGMENT

Ramachandran Nair, J.

The claimants respectively are the widow and mother of deceased Abdul Gafoor. He met with an accident on 4.3.2006 at 11 a.m. While he was riding the motor cycle bearing Reg.No.KL 7/E 2433 from south to north through the Tripunithura-Ponjassery road, another motor cycle bearing Reg.No.KL 7/P 4948 collided with the same. He was taken to the hospital since he sustained serious head injury and remained there for two days for treatment and finally he died on 6.3.2006. The total compensation arrived at by the Tribunal is ₹ 4,80,842/- as against the claim of ₹ 5,90,500/-. Since the appellants had limited the claim to ₹4,50,000/-, the said amount has been awarded.

2. The learned counsel for the appellant submits that in the light of the judgment of the Apex Court in **Nagappa v. Gurudayal Singh (2003 (1) KLT 115)** and in **Rajesh v. Rajbir Singh (2013 (3)**

KLT 89 (SC), there is no limit on the part of the Tribunal or court in granting compensation even though the claimants showed in the application a particular amount and the Tribunal or the court can award just compensation. In the light of the above, we find that the direction given by the Tribunal to award only ₹4,50,000/- even though it was found that they are entitled for ₹4,80,842/- cannot be justified.

3. Apart from the same, the learned counsel for the appellants submits that the amounts awarded under different heads are also not in tune with the decision of the Apex Court including in **Rajesh's** case (supra). Therefore, we proceed to consider the merits of the claim.

4. The learned counsel for the Insurance Company submitted that the compensation granted is just and fair. The deceased was aged 28 at the time of the accident and was working as a construction worker. On the ground that he may not earn wages everyday in a month, the Tribunal has arrived at the monthly income at ₹3,000/-. As rightly pointed out by the learned counsel for the appellant, for construction workers, wages will be on higher rate than even a daily labourer. Apart from the same, we are of the view that the amount

claimed by the appellants were only @ ₹6,000/- per month. In the light of the decision of the Apex Court in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd. (2011(13) SCC 236)**, where in the case of daily labourer, the Apex Court found that the fixation of monthly income at ₹4,500/- is not exorbitant in a case of accident which arose during the year 2004, we will be justified in adopting ₹5,000/- as the monthly income. As far as this case is concerned, the multiplier to be adopted is 17 going by the judgment of the Apex Court in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**. We also find that the Tribunal has granted only ₹2,500/- towards funeral expenses, ₹ 2500/- towards loss of estate, ₹10,000/- each towards loss of consortium and loss of love and affection which require enhancement in the light of the various decisions of the Apex Court.

5. We therefore refix the compensation in the following manner :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Transport to hospital	2000
Damage to clothings etc.	750

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Funeral expenses	25000
Pain and suffering	10000
Loss of estate	30000
Loss of consortium	100000
Loss of dependency	680000 (5000 x 12 x 17 x 2/3)
Loss of love and affection	100000
Treatment expenses	35292
Bystander's expenses	750 (250 x 3)
Total	9,83,792/- Rounded off to ₹9,83,800/- (Rupees nine lakhs eighty three thousand eight hundred only)

The appeal is accordingly allowed. The enhanced compensation will carry interest @ 9% per annum from the date of petition. There will be a direction to the Insurance Company to deposit the amount less the amount already deposited before the Tribunal within three months. We also hold that 1/4th of the enhanced compensation will be shared by appellant No.2, the mother of the deceased and the remaining amount will be shared by appellant No.1, the widow of the deceased. The appellants are permitted to withdraw the amount, once it is deposited.

There will be no order as to costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

sv.

K.P.JYOTHINDRANATH, JUDGE