

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

MACA.No. 1514 of 2010 ()

AGAINST THE AWARD IN OPMV 1366/2003 of M.A.C.T., THALASSERY DATED 27-02-2010

APPELLANT(S)/PETITIONER:

C.SAJESH, AGED 25 YEARS,
RESIDING NEAR SERVICE CO-OP.BANK LTD., VELLUR
P.O.VELLUR, PAYYANNUR (VIA), KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S)/RESPONDENT NO.3:

ROYAL SUNDARAM ALLIANCE INSURANCE
CO.LTD., 46 WHITES ROAD, CHENNAI-600 014.

R,R BY ADV. SRI.MATHEWS JACOB (SR.)

R,R BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 21-05-2015, ALONG WITH MACA. 1532/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.Nos.1514 & 1532 of 2010

Dated this the 21st day of May, 2015

JUDGMENT

Ramachandran Nair, J.

Both these appeals have arisen from the awards in the same accident and the Tribunal also has disposed of the two applications together. In M.A.C.A. No.1532/2010 the appellants are the widow and children of late Shri Kunhappan who died in the accident and in M.A.C.A. No.1514/2010 the injured is the appellant. Short facts for the disposal of the appeals are the following:

2. The accident occurred on 28.4.2003 at about 8 a.m. The deceased was standing along with his son and other relatives nearby the bus shelter at KSRTC junction, Payyannur. The father and son were hit by a Mahindra Bolero jeep bearing registration No. KL-11P-9081. He died while being taken to the Medical College Hospital, Pariyaram. A total amount of Rs.3,50,000/- was claimed as compensation. In the

other case the appellant who was injured, was granted an amount of Rs.64,260/- as compensation.

3. First we will consider M.A.C.A. No.1532/2010. The deceased, according to the learned counsel for the appellants, had not completed 51 years of age as on the date of accident, his date of birth being 21.6.1952 as shown in Ext.A14. The date of accident being 28.4.2003, he had not reached 51 years of age. It is submitted that the multiplier will have to be fixed accordingly. It is also submitted that he was a milk supplier and was earning Rs.3,000/- per month. This is supported by the evidence of P.w.2, his wife who deposed that he was supplying milk for Swaraj Agricultural Dairy Farm, as their employee. He was having licence as an autorickshaw driver and his driving licence has been produced as Ext.A14.

4. The monthly income assessed by the Tribunal is Rs.2,500/-. The accident is of the year 2003. We fix the monthly income at Rs.2,750/- which will be reasonable. The claimants being four in number, 1/4th will have to be deducted for personal expenses. Therefore, the compensation towards loss of dependency will be

Rs.3,21,750/- (Rs.2750 x 12 x 13 x $\frac{3}{4}$).

5. The Tribunal has granted Rs.10,000/- towards funeral expenses which we enhance to Rs.25,000/- in the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 - SC). Towards loss of consortium to appellant No.1, an amount of Rs.1 Lakh can be granted. Learned Senior Counsel for the insurance company submitted that the said amount is exorbitant. Appellant No.1 was aged 45 at the time of accident and the deceased was aged only 50. Therefore, it will be a just and fair amount towards loss of consortium. We also grant an amount of Rs.1 Lakh towards loss of love and affection. The Tribunal has granted only a sum of Rs.2,500/- towards loss of estate which we enhance to Rs.30,000/-. No amount has been granted for pain and suffering of the deceased and we provide an amount of Rs.10,000/- for pain and suffering.

6. Accordingly, the total compensation will be 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	220200	321750

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Funeral expenses inclusive of clothing	10000	25000
Loss of consortium	5000	100000
Loss of love and affection	10000	100000
Loss of estate	2500	30000
Pain and suffering		10000
Total		586750

(Rupees Five lakhs eighty-six thousand seven hundred and fifty only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months. From out of the enhanced amount, 50% along with interest is apportioned to appellant No.1 and the remaining amount along with its interest will be shared equally by appellants 2, 3 and 4. The appellants are permitted to withdraw the same also once the amount is deposited by the insurance company. The court fee payable for the total amount will be recovered by the Tribunal from the amount deposited by the Insurance Company.

7. In M.A.C.A. No.1514/2010, learned counsel for the appellant

submitted that the Tribunal has not considered the entire evidence in detail to award just compensation. The appellant had completed 17 years as on the date of accident, his date of birth being 13.12.1985 proved by Ext.A6. It was contended that he was a salesman by profession and was earning Rs.2,000/- per month. The Tribunal did not accept the case that he was employed, in the light of his deposition that the result of Plus Two examination was declared during May, 2003. The evidence of P.W.2 mother also showed that he usually goes to school by 9.30 a.m. and return back by 4 p.m. and that he will be available in house during holidays. Therefore, a notional income at Rs.1,500/- was taken for the purpose of assessing disability compensation.

8. The appellant had sustained head injury with bleeding on the right ear, going by Ext.A2 wound certificate. Ext.A3 is the discharge summary issued from Unity Hospital, Mangalore which shows that he had sustained closed head injury on left occipital and parietal region. He was treated as inpatient in the said hospital for a period of 16 days. He had sustained certain minor injuries in the abdomen, as evident

from Ext.A5 scan report. Ext.X1 disability certificate issued by the Medical Board of the Medical College Hospital, Pariyaram showed 2% disability.

9. The Tribunal has arrived at an amount of Rs.5,760/- as compensation towards permanent disability by adopting the multiplier of 16. An amount of Rs.33,400/- has been granted as medical expenses and Rs.18,000/- has been granted for pain and suffering. For bystander's expenses, an amount of Rs.1,600/-, for transportation expenses a sum of Rs.1,500/- and another sum of Rs.4,000/- for extra nourishment and review have been granted.

10. Even though learned counsel for the appellant heavily pleaded for enhancing the compensation for permanent disability, by fixing a suitable amount as monthly income, it cannot be said that he was employed, since he had completed Plus Two course only in May, 2003. There is no documentary evidence to support the claim of employment also. Therefore, as far as fixing the monthly income at Rs.1,500/- is concerned, we do not find any reason to interfere with the award of the Tribunal. The permanent disability is only 2% also.

11. The appellant was treated as inpatient for a period of 16 days. The Tribunal has granted only Rs.1,600/- as bystander's expenses at the rate of Rs.100/- per day which we enhance to Rs.3,200/- taking an average amount at Rs.200/- per day. For pain and suffering, we fix an amount of Rs.35,000/-. For extra nourishment and review, we grant a further amount of Rs.2,000/-, totalling Rs.6,000/- and for transport to hospital also, we fix an amount of Rs.4,000/-, since the appellant was treated in a hospital at Mangalore.

Therefore, the total compensation will be refixed as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Disability income	5760	5760
Medical expenses	33400	33400
Pain and suffering	18000	35000
Transport to hospital	1500	4000
Bystander's expenses	1600	3200
Extra nourishment	4000	6000
Total		87360

(Rupees Eighty-seven thousand three hundred and sixty only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition and the insurance company is directed

to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months. The appellant is permitted to withdraw the amount.

The appeals are allowed as above. The parties will bear their costs in the appeals.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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