

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 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

MACA.No. 1542 of 2010 ()

AGAINST THE AWARD IN OPMV 1293/2005 of MACT, ALAPPUZHA
DATED 08-05-2009

APPELLANT(S)/PETITIONERS IN OPMV:

1. A.SAINULABDEEN,
NAWAZMANZIL ALLISSERYWARD,
ALAPPUZHA, ALAPPUZHA DISTRICT.

2. NABEESA BEEVI, W/O.SAINULABDEEN,
NAWAZ MANZIL, ALLISSERY WARD, ALAPPUZHA,
ALAPPUZHA DISTRICT.

3. NASEELA.S,
D/O.SAINULABDEEN,
NAWAZ MANZIL, ALLISSERY WARD, ALAPPUZHA
ALAPPUZHA DISTRICT.

4. SAFEELA.S, D/O.SAINULABDEEN,
NAWAZ MANZIL, ALLISSERY WARD, ALAPPUZHA
ALAPPUZHA DISTRICT.

BY ADV. SRI.SIRAJ KAROLY

RESPONDENT(S)/RESPONDENT IN OP(MV):

*1. BAIJU.D,
S/O.DASAPPAN, THYVELIYIL,
ARYAD SOUTH P.O, ALAPPUZHA,
ALAPPUZHA DISTRICT-688009.(STRUCK OFF AND DELETED)

*2. SAJEEB ABDUL SALAM, T.D.CHIRA,
VELLAKKINAR WARD, ALAPPUZHA P.O,
ALAPPUZHA DISTRICT-688 001.(STRUCK OFF AND DELETED)

#3. THE MANAGER, NEW INDIA INSURANCE CO.LTD,
M.O.WARD, NEAR TOWN HALL, ALAPPUZHA P.O
ALAPPUZHA DISTRICT-688 001.

(*RESPONDENTS 1 AND 2 ARE STRUCK OFF AND DELETED FROM THE PARTY
ARRAY AT THE RISK OF THE APPELLANT AS PER THE ORDER DATED 30.03.2015
IN I.A.NO.1271/2015 IN MACA NO.1542/2010)

(#THE NAME OF RESPONDENT NO.3 IS CORRECTED AS NEW INDIA
ASSURANCE COMPANY LTD. AS PER ORDER DT.1.4.15 IN I.A.NO.1405/2015 IN
MACA.NO.1542/2010)

R,R3 BY ADV. SRI.N.S.MOHAMMED USMAN

R1 BY ADV. SRI.R.AZAD BABU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.1542 of 2010

Dated this the 9th day of April, 2015

JUDGMENT

Asha, J.

Legal heirs of deceased Nawaz have filed this appeal seeking enhancement in compensation. Deceased Nawaz met with an accident on 14.05.2005 on collision of the motorcycle, which he was riding, with another motorcycle, while he was riding along Alappuzha-Thanneermukkam road, causing fatal injuries to him.

2. Claim petition was filed seeking compensation of Rs.12 lakhs. The Tribunal awarded a sum of Rs.3,30,000/-. Enhanced compensation is sought aggrieved by the inadequacy on various heads of compensation in the award passed by the Tribunal.

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

4. PWs 1 to 3 were examined on behalf of the appellants and documentary evidence consisted of Exts.A1 to A17. The respondents did not adduce any evidence apart from the production of documents Exts.B1 to B4 relating to the insurance policy, R.C book etc.

5. The claim of the appellants was that the deceased was earning a monthly income of Rs.15,000/-. In support of that claim, salary certificate Ext.A7 from L.G Sea Foods, Palluruthy, was produced to the effect that he was working as Purchase Manager there, from November, 2003 onwards on part-time basis on a consolidated payment of Rs.6,500/- per mensem. Ext.A8 certificate was produced to show that he was a partner and part-time manager of Appus Ladies Stores and Gold Covering, Alappuzha, earning a sum of Rs.8,000/- towards share of profit and salary. Apart from that an advice memo issued by Public Service Commission, for appointment of the deceased as a Police Constable, was produced as Ext.A10. Ext.A15 was produced to show that the deceased was having foreign work permit and Ext.A16 driving license as well as Ext.A17 passport were also produced in support of the claim regarding

qualification and capability of the deceased. Apart from that, the deceased was a certificate holder in the trade of Electrician from the Institute of Engineering Technology, Alappuzha. The Tribunal reckoned his income as Rs.5,000/- and a sum of Rs.3 lakhs was awarded as compensation towards loss of dependency.

6. Having regard to the qualification acquired by the deceased and his avocations in various fields, we are of the view that a sum of Rs.7,500/- can be reckoned as the monthly income of the deceased. As the deceased was of the age of 27 years and was unmarried, the proper multiplier is 17 and 50% of the income has to be deducted towards personal expenses. Therefore the compensation under the head, loss of dependency will come to $\text{Rs.7,500} \times 12 \times 17 \times 50/100 = \text{Rs.7,65,000/-}$.

7. The Tribunal has awarded a sum of Rs.15,000/- towards loss of love and affection, Rs.10,000/- towards pain and suffering and Rs.3,000/- towards funeral expenses, which require modification in the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)]. Therefore we enhance the compensation under the heads, loss of love and

affection to Rs.1,00,000/- and funeral expenses to Rs.25,000/- and further award a sum of Rs. 25,000/- towards loss of estate.

8. The award passed by the Tribunal is accordingly modified as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Compensation for the pecuniary loss caused to the petitioners due to the death of Navas	Rs.7,65,000.00
2	Compensation for loss of love and affection	Rs.1,00,000.00
3	Compensation for pain and suffering	Rs. 10,000.00
4	compensation for loss of estate	Rs. 25,000/-
4	Ambulance charge	Rs. 2,000.00
5	Funeral expenses	Rs. 25,000.00
	Total	Rs.9,27,000.00

(Rupees Nine lakhs and twenty seven thousand only)

Appellants 1 and 2 will be entitled to a total compensation of Rs.9,27,000/- (Rupees Nine lakhs and twenty seven thousand only), which can be shared among them equally. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation, less the amount already paid, within 3 months from the date of receipt of a copy of this judgment and on such deposit being made, the claimants can

withdraw the amount.

The appeal is allowed accordingly. The parties will bear their respective costs in this appeal.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge