IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

MACA.No. 1896 of 2010 ( )

AGAINST THE AWARD IN OPMV 2903/2005 of M.A.C.T.,ERNAKULAM DATED 06-04-2010

APPELLANTS/CLAIMANTS:
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1. SAJINI .K.R.,W/O LATE SASI AGED 35 YEARS
KIZHAVANANIKARTHIL HOUSE, CHERANELLOOR POST
KANAYANNUR TALUK, ERNAKULAM DISTRICT.

2. SARANYA K.S. (MINOR), D/O.LATE SASI
REPRESENTED BY HER MOTHER SAJINI K.R.
(DOB 24.04.1996) -DO-.

3. SALINI K.S.(MINOR), D/O.LATE SASI
REPRESENTED BY HER MOTHER SAJINI K.R.
(DOB 11.09.2001) -DO-.

4. BHAVANI P.V., W/O.GANGADHARAN, AGED
65 YEARS, KIZHAVANANIKARTHIL HOUSE, CHERANELLOOR POST
KANAYANNUR TALUK, ERNAKULAM DISTRICT.

5. GANGADHARAN K.K., S/O.KUNDANKORI,
AGED 75 YEARS, -DO-.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS:
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1. JACOB PETER, MUTTAMTHOTTIL HOUSE
KEEZHMAD, ALUVA.

2. JOBY K.T., S/O.THOMAS, KOIDYAN HOUSE,
KOTTAPPURAM, ALANGAD, ALUVA.

3. THE UNITED INDIA INSURANCE CO.LTD.,
REPRESENTED BY ITS MANAGER, TPCO, VETTUKATTIL
BUILDING, ERNAKULAM.

R2 BY ADV. SRI.C.K.PAVITHRAN
R2 BY ADV. SRI.M.VIVEK
R3 BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.1896 OF 2010

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Dated this the 20th day of March, 2015

JUDGMENT

Asha, J.

Parents, widow and children of deceased Sasi, who met with an accident on 21/04/2005 and succumbed to the injuries after two days, filed this appeal seeking enhancement of compensation. The deceased Sasi was an employee in a toddy shop coming under Ernakulam range and was aged 42 years at the time of the accident. In support of the claim towards loss of dependency, the appellants had produced Ext.A9 certificate in order to show that the total salary the deceased was drawing is ₹6,855.10 with a break up of ₹2030.10 as basic monthly salary, ₹2070/- as DA, ₹1020/- as food allowance and ₹1735/- as other allowance. The Tribunal reckoned his income as ₹4,000/- without reckoning the allowances covered by Ext.A9 certificate. The appellants had examined PW1 in order to prove the income as evident from Ext.A9. Ext.A10 identity card was produced to show that the deceased was a member of the Toddy Welfare Board. After reckoning 30% towards future prospects, the Tribunal awarded a sum of ₹4,17,200/- towards loss of dependency.

2. The learned counsel for the appellants submits that the method adopted by the Tribunal for reckoning the compensation under this head is not correct.

3. The learned counsel for the Insurance Company opposed the claim for enhancement and submits that the allowances cannot be reckoned towards the monthly income. The learned counsel also submits that appellants are not entitled to compensation in excess of the claim made in the claim petition.

4. In the light of the judgment of the Apex Court in **Nagappa v. Gurudayal Singh (2003 (1) KLT 115)** and subsequent decisions, there cannot be any bar in awarding just and reasonable compensation in excess of the claim made.

5. We are of the view that as rightly contended by the learned counsel for the appellants that the method adopted by the Tribunal in arriving at the compensation under the head of loss of dependency is

not correct. When Ext.A9 certificate shows the total salary of the deceased as ₹6,855.10, allowances included therein should not have been deducted. Since the deceased was aged 42, 30% of the income has to be reckoned towards future prospects. Therefore, the compensation towards loss of dependency is recalculated as ₹11,22,912/-(8912 x 12 x 14 x ¾).

6. The Tribunal has awarded only a sum of ₹15,000/- towards loss of consortium and ₹20,000/- towards loss of love and affection, ₹5,000/- towards funeral expenses and transportation. In the light of the judgment of the Apex Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)** , we award a sum of ₹1,00,000/- towards loss of consortium, ₹1,00,000/- towards loss of love and affection and ₹25,000/- towards funeral expenses. ₹35,000/- is awarded towards loss of estate, instead of ₹5,000/- awarded by the Tribunal.

7. Accordingly, the award of the Tribunal is modified as follows :

Head of claim	***Amount Awarded in rupees***
Loss of dependency	1122912

Head of claim	***Amount Awarded in rupees***
Expenses for transportation of body and funeral expenses	25000
Medical expenses	50000
Pain and suffering	15000
Loss of consortium	100000
Loss of love and affection	100000
Loss of estate	35000
Total	1447912 Rounded off to ₹14,47,900/- (Rupees fourteen lakhs forty seven thousand nine hundred only)

8. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. If there is any deficit in the court fee, the Tribunal can recover it from the appellants before disbursing the amount. The amount will be apportioned among the appellants in accordance with the ratio fixed by the Tribunal. All the appellants except the third appellant, who is a minor, are allowed to withdraw their respective shares as soon as the

Insurance Company deposits the same. In the case of the third appellant, her share shall be kept in Fixed Deposit in a nationalized bank till she attains majority.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

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