

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. 2321 of 2009 ()

AGAINST THE AWARD IN OPMV 1518/2002 of MACT ALAPPUZHA
DATED 27-08-2008

APPELLANT(S): PETITIONERS

1. C.K.SAMARDHAN.C, KYAMBUVELIYIL VEEDU
KALAVOOR PO, WARD NO.20, ALAPPUZHA.

2. S.SARASAMMA, D/O. SREEDHARAN,
KYAMBUVELIYIL VEEDU, KALAVOOR PO, WARD NO.20
ALAPPUZHA.

3. S.RATHEESH, S/O.SAMARDHAN C.K.,
KYAMBUVELIYIL VEEDU, KALAVOOR PO, WARD NO.20
ALAPPUZHA.

BY ADVS.SRI.GEORGE SEBASTIAN
SRI.V.MAHENDRANATH

RESPONDENT: 3RD RESPONDENT

THE NEW INDIA ASSURANCE COMPANY LTD.
SALIN BUILDINGS , NEAR H.P.O., M.C.ROAD
CHANGANASSERY.

R,R1 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.2321 of 2009-C

Dated this the 20th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The accident involving the deceased daughter of appellants 1 and 2 occurred on 3.7.2002. She was riding a Scooter bearing Reg.No.KL-5A 8846 through Alappuzha-Ernakulam National Highway. At Valavanadu, a Tanker Lorry having Reg.No.KL-5/F-3218 overtook the Scooter and when it stopped suddenly the rear portion of the lorry hit the Scooter and the deceased fell down and she sustained grievous injuries. She was admitted in the Medical College Hospital, Alappuzha and was treated there for 4 days and finally succumbed to the injuries on 7.7.2002.

2. The age of the victim was 23 and she was working as a Field Worker, Gandhi Smarakam, S.L.Puram and Ext.A6 is the certificate issued by the Dy.Director, General National Cadet Corps and Ext.A8 is the certificate issued by the Dakshina

Bharath Hindi Prachar Sabha in which it is stated that she has passed S.S.L.C Hindi Pre-Test. The appellants claimed a total amount of Rs.12,84,000/- which was limited to Rs.10 lakhs and the monthly earnings was claimed at Rs.5,000/-.

3. Before the Tribunal evidence was let in by producing Exts.A1 to A11. The learned counsel for the appellants submitted that the monthly income assessed by the Tribunal is by overlooking the documentary evidence. For the purpose of fixing compensation, Rs.2,500/- has been adopted as the monthly income. This was on the premise that after the marriage, her contribution to the appellants will be reduced. We find from the detailed evidence adduced by the appellants that she was working as a Field worker in Gandhi Smarakam, S.L.Puram Ext.A6 is the certificate issued by the Deputy Director, General National Cadet Corps in which it is stated that she passed the certificate in 'B' examination held in 1998 under the Ministry of Defence, Govt. Of India. Ext.A7 is produced to show that she had participated in the All India National Integration Camp held on 26.11.2007 at Shilong. Ext.A8 is produced to prove that she had passed S.S.L.C Hindi Pre-Test through the Dakshina Bharath Hindi Prachar Sabha. Ext.A9 is the membership card issued to

her from the Kerala Press Association. Ext.A11 is a copy of the 'Grama Sree' which contained an article written by one Usha about the deceased. The main argument raised by the learned counsel for the appellants is by relying on Ext.A10 certificate which was issued by the Secretary, Gandhi Smarakam Grama Seva Kendram showing that she was working as Co-ordinator in SHG Project and was drawing Rs.5,000/- per month. The Tribunal did not fully rely upon the same on the finding that no certificate from the Village Officer or other Revenue Authorities was produced to prove the monthly income. Another reason attributed is that she may get married and therefore the contribution will be reduced in the coming years. We are of the view that Ext.A10 issued by the Secretary, Gandhi Smarakam Grama Seva Kendram could have been acted upon by the Tribunal. Therefore we find that Rs.5,000/- can be taken as the monthly income of the deceased. Since she had not married, 50% will have to be deducted for personal expenses.

4. It is also pointed out that the compensation for loss of love and affection was granted at Rs.10,000/- and for pain and suffering only Rs.15,000/- has been granted. We find from the award that for funeral expenses Rs.3,000/- has been granted.

The multiplier going by the age of the deceased is 18. Therefore we recompute the compensation for loss of dependency in the following manner:

Compensation for loss of
dependency :Rs.5000 X 12X 18X50/100=Rs.5,40,000/-

We enhance the amount under the head loss of love and affection to Rs.1,00,000/-, pain and suffering to Rs.25,000/- and funeral expenses to Rs.25,000/-. Towards loss of estate nothing has been granted by the Tribunal and we award Rs.20,000/- under this head. Therefore we modify the award passed by the Tribunal as follows:

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	540000
Loss of love and affection	100000
Pain and suffering	25000
Ambulance charge	2000
Funeral expenses	25000
Loss of estate	20000
Total	712000 (Rupees Seven lakhs twelve thousand only)

5. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The award of the Tribunal

shows that an interim award was passed for Rs.50,000/-. Therefore there will be a direction to the Insurance Company to deposit the amount of compensation less the amount already deposited before the Tribunal within a period of three months. From out of the total compensation, Rs.50,000/- is earmarked for the 3rd appellant and the remaining will be shared equally between appellants 1 and 2.

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