

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

MACA.No. 2590 of 2014 (D)

O.P.(MV) No.611/2010 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,THODUPUZZHA

APPELLANTS (CLAIMANTS BEFORE TRIBUNAL) :

- 1. JOHN.P.J., AGED 67 YEARS,
S/O.JOHN, PAZHUKKAKULATH HOUSE,
ERATTAYAR P.O., KALKOONTHAL VILLAGE,
KATTAPPANA, IDUKKI DISTRICT.**
- 2. THRESSIA P.O., AGED 68 YEARS,
W/O.JOHN, PAZHUKKAKULATH HOUSE,
ERATTAYAR P.O., KALKOONTHAL VILLAGE,
KATTAPPANA, IDUKKI DISTRICT.**
- 3. SREELAJ, AGED 37 YEARS,
S/O.JOHN, PAZHUKKAKULATH HOUSE,
ERATTAYAR P.O., KALKOONTHAL VILLAGE,
KATTAPPANA, IDUKKI DISTRICT.**

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENTS (RESPONDENTS IN THE TRIBUNAL) :

- 1. RAJKUMAR, AGED 60 YEARS,
S/O.SREERAM, SECTOR 22/864,
HOUSING BOARD COLONY,
FASIYANA, FARIDABAD,
HARIYANA STATE , PIN - 121 002.**
- 2. CHANDAR BHAR SHARMA,
SHREE SHYAM LOGISTICS,
17/6, MATHURA ROAD,
FARIDABAD, HARIYANA STATE,
PIN - 121 002.**

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(2)

**3. ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD.,
SLO 107, SECTOR 16, FARIDABAD,
HARIYANA STATE, PIN - 121 002.**

**R3 BY ADVS. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW
SMT.PREETHY R. NAIR**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 19-01-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

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

M.A.C.A.No. 2590 of 2014

Dated this the 19th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The parents and the brother of the deceased are the appellants herein. By the impugned order, the Tribunal has granted a total compensation for ₹12,34,315/- with interest at the rate of 8.5% per annum from 10.11.2010 till realisation.

2. The vehement contention raised by the learned Counsel for the appellant is that, as against the claim for ₹12,000/- as monthly remuneration, the Tribunal has accepted only ₹9,000/-. It is submitted that he is the holder of an engineering degree and was offered an appointment just before the accident occurred. In support of the case of the applicants, Ext.A7 degree certificate issued by the University of Calicut, Ext.A8 is the certificate issued by the Electronic Research and Development Centre of India, Thiruvananthapuram, Ext.A9 course completion certificate issued from the Electronic Research and Development Centre of India and Ext.A10 merit certificate have been produced. The appointment letter from 'iDuple' is also produced before the Tribunal as Ext. A14.

3. The accident occurred, while the deceased was riding the motorcycle bearing Reg.No.KL.02Y/1323 along the Thrissur-Palakkadu road, the lorry bearing Reg.No.HR.38L.6381 hit against

the motorcycle. He was immediately admitted in the Jubilee Mission Medical College Hospital, Thrissur and was treated there till 25.08.2010 and he succumbed to the injuries on that date.

4. The appellants are aged 62, 63 and 32 years going by the age noted down in the application. Even though, Shri. Sachithananda Pai the appellant's Counsel has submitted this Court will be justified in fixing the monthly remuneration at ₹15,000/- or atleast ₹12,000/-, the learned Senior Counsel for the insurance company, Shri.Mathews Jacob submitted that, in this case a reasonable amount has been arrived at by the Tribunal especially in the light of the fact that he did not join for any job, even though he acquired the degree in the year 2001. The Tribunal after relying upon the judgment of this Court fixed the monthly income of the deceased at ₹9,000/- and awarded a sum of ₹8,64,000/- towards loss of dependency.

5. Going by the appointment order-Ext.A14, the remuneration is for an amount of ₹15,000/- for three months. During the period of training, allowance of ₹15,000/- was also offered per month. Evidence is not there to show that he had been actually working in the 'iDuple' as Marketing Manager. In that view of the matter, the Tribunal will have to fix it by taking a reasonable amount. He had obtained the degree in 2001 and he was aged 33 at the time of death. The appellant's counsel also submitted that he had an Artistic talent.

6. Having considered the rival submission, we are of the view that the multiplicand arrived at by the Tribunal is just and proper and therefore no interference is called for.

7. The Tribunal has fixed the compensation going by the table provided in Para 14 which we reproduce below:-

Sl. No.	Heads of claim	Amount claimed (in Rupees)	Amount Awarded (in Rupees)	Basis-vital details in nut shell
1	Loss of dependency	16,00,000/-	8,64,000/-	(9,000/-x12) – ½x16
2	Transportation expense	25,000/-	5,000/-	Bills produced
3	By-stander's expenses	1,00,000/-	2,500/-	Rs.250/- x 10 days x 1 person
4	Medical expenses	2,00,000/-	1,76,815/-	Bills produced
5	Funeral expenses	25,000/-	25,000/-	
6	Damage to clothing	1,500/-	1,000/-	
7	Pain and suffering	2,00,000/-	20,000/-	
8	Loss of love and affection	2,00,000/-	1,00,000/- + 30,000/-	50,000/- x 2 30,000/-
9	Loss of estate	5,00,000/-	10,000/-	
10	Total	Limited to Rs.25 lakhs	Rs.12,34,315/-	Rs.12,34,315/- along with interest at the rate of 8.5% per annum from 10.11.2010 till realisation

8. The Tribunal has awarded ₹20,000/- for pain and suffering, ₹1,30,000/- for loss of love and affection and ₹10,000/- for loss of estate apart from transportation expenses, by-stander's expenses, medical expenses and funeral expenses. The deceased was in hospital for a period of 10 days. He had sustained serious injuries to his head and the injuries are described as grievous also. The rear wheel of the lorry run over the body of the deceased, which caused happening of serious injuries to him.

9. In the light of the above, we are of the view that, a further amount of ₹20,000/- can be granted towards pain and suffering and ₹20,000/- can be granted towards loss of estate. Therefore the total compensation will be as follows;

Sl. No.	Heads of claim	Amount Awarded (in Rupees)
1	Loss of dependency	8,64,000/-
2	Transportation expense	5,000/-
3	By-stander's expenses	2,500/-
4	Medical expenses	1,76,815/-
5	Funeral expenses	25,000/-
6	Damage to clothing	1,000/-
7	Pain and suffering	40,000/-
8	Loss of love and affection	1,00,000/- + 30,000/-
9	Loss of estate	20,000/-
10	Total	Rs.12,64,315/- (Rupees Twelve lakh Sixty Four Thousand Three Hundred and Fifteen only)

10. The Tribunal has granted 8.5% as interest which will be modified to 9% in the light of the decision of the Apex Court in **Supeidei (Smt.) and others v. National Insurance Company Ltd. And another** [2009(4) SCC 513].

The appeal is accordingly disposed of.

Sd/-
T.R.RAMACHANDRAN NAIR
JUDGE

Sd/-
P.V.ASHA
JUDGE

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P.A. TO JUDGE