

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

MACA.No. 2038 of 2010 ( )

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AGAINST THE AWARD IN OPMV 54/2007 ON THE FILE OF THE MOTOR ACCIDENTS  
CLAIMS TRIBUNAL, OTTAPPALAM DATED 16-06-2010

APPELLANTS/PETITIONERS:

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1. KHADEEJABI, W/O.DECEASED ALI,  
THENGAKOOTIL HOUSE, AZHIKODE JETTY P.O., THRISSUR.

2. AJEEB S/O.LATE ALI, -DO-.

3. RAJEENA (MINOR), D/O.LAE ALI,  
REP.BY HER MOTHER KHADEEJABI -DO-.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS/RESPONDENTS:

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1. VINEESH, S/O.VASU, VHEETTIKATTIL HOUSE,  
AZHIKODE (PO), PUTHENPALLI BEACH, THRISSUR  
PIN 680 612. (DRIVER- KL 8 AH 6592).

2. SEBASTIAN, S/O.APPACHAN,  
AVITTAMPILLY HOUSE, AZHIKODE P.O., THRISSUR  
PIN 680 608. (OWNER KL 8 AH 6592).

3. THE ORIENTAL INSURANCE COMPANY LTD.,  
BRANCH OFFICE, MANAPPATT BUILDING, NORTH NADA  
KODUNGALLUR PO, PIN 680 664., (POLICY NO.247/2007  
VALID FROM 01/04/06 TO, 31/02/07).

R,R1-2 BY ADV. SMT.C.G.PREETHA

R3 BY ADV. SMT.K.S.SANTHI.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

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M.A.C.A. No.2038 of 2010  
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Dated this the 24<sup>th</sup> day of March 2015

**JUDGMENT**

**Ramachandran Nair , J.,**

This appeal is filed from the award in O.P.(MV) No. 54/07 on the file of the Motor Accidents Claims Tribunal, Ottappalam. The appellants are respectively the widow and two children of the deceased Ali. The accident occurred on 13.12.2006 at 9 p.m at Hamadaniya School Junction at Puthenpally Beech Road.

2. We are called upon to consider the arguments raised by the learned counsel for the appellant with regard to the inadequacy of compensation awarded. As against the claim of Rs. 7 lakh, the tribunal has awarded a sum of Rs. 2,33,200/-.

3. Before the Tribunal, the appellants claimed that the deceased was aged 46 years and was a fish seller earning Rs. 4,500/- per month. The tribunal adopted the age as recorded in the post mortem certificate. The monthly income fixed by the

Tribunal is at Rs. 1,800/- . The learned counsel for the appellant submitted that the same is too low considering the fact that he was a fish seller. The learned counsel for the Insurance company submitted that the amount fixed is proper and just.

4. The accident, as already noticed had occurred in the year 2006. Therefore, we fix an amount of Rs. 4,000/- as monthly income and award compensation accordingly. The compensation awarded towards loss of consortium at Rs.15,000/-, for loss of love and affection at Rs. 15,000/-, for loss of estate at Rs. 10,000/- and for funeral expenses at Rs. 5,000 also require modification. No amount has been granted towards pain and suffering also.

5. The deceased sustained injuries at 9 p.m on 13.12.2006 and he succumbed to the injuries on the next day. Therefore, we award a sum of Rs. 10,000/- for pain and suffering.

6. We recompute the compensation in the following manner, after granting Rs. 1 lakh towards loss of consortium, Rs. 1 lakh for loss of love and affection, towards loss of estate Rs. 30,000/-, towards funeral expenses Rs. 25,000/- and by fixing

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an amount of Rs. 4,16,000/- (Rs.4,000x12x13x2/3) as loss of dependency. Accordingly, we modify the award as follows:

| <i>Sl.No.</i> | <i>Heads</i>               | <i>Amt.awarded</i> | <i>Amt. modified</i> |
|---------------|----------------------------|--------------------|----------------------|
| 1             | Transportation expenses    | 1000               | 1000                 |
| 2             | Damage to clothing         | 500                | 500                  |
| 3             | Loss of dependency         | 187200             | 416000               |
| 4             | Loss of consortium         | 15000              | 100000               |
| 5             | Loss of love and affection | 15000              | 100000               |
| 6             | Loss of estate             | 10000              | 30000                |
| 7             | Funeral expenses           | 5000               | 25000                |
| 8             | Pain and suffering         |                    | 10000                |
|               | Total                      | 233200             | 682500               |

7. Hence, the total compensation will be Rs. 6,82,500/- (Rupees Six lakh Eighty Two thousand Five hundred only) which will carry interest at the rate of 9% p.a for the enhanced compensation.

8. The Tribunal has directed the Insurance company to pay the amount but right of recovery also is granted. We reiterate the same. The Insurance Company is directed to deposit the amount less the amount already deposited within a period of three months. Out of the total compensation, 50% of the award

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amount will be given to Appellant No.1 and the rest of the amount will be shared equally among the appellants 2 and 3.

The appeal is accordingly disposed of. The parties will suffer their costs in this appeal.

**Sd/-**

**T.R.RAMACHANDRAN NAIR  
(JUDGE)**

**Sd/-**

**P.V.ASHA  
(JUDGE)**

AL/-

True copy

P.A to Judge