

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

MACA.No. 1130 of 2008 ()

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AGAINST THE AWARD IN OP(MV) 1921/1999 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
ALAPPUZHA DATED 26-05-2006**

APPELLANTS/PETITIONERS:

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- 1. M.P.BABU, S/O.PADBHANABHAN,
MALIYAKKAL HOUSE, THYCKAL.P.O., CHERTHALA.**
 - 2. MINU, AGED 13, D/O.BABU,
MALIYAKKAL HOUSE, THYCKAL P.O., CHERTHALA
REPRESENTED BY HER FATHER AND GUARDIAN THE
FIRST APPELLANT.**
 - 3. KARUNAMAYI, W/O.RAJAPPAN,
VALLEVELI, C.M.C.26, CHERTHALA.**

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS/RESPONDENTS:

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- 1. THE COMMANDANT GENERAL,
HOME GUARD, CIVIL DEFENCE AND FIRE SERVICE KERALA
SASTHAMANGALAM, THIRUVANANTHAPURAM.**
 - 2. PRASANNAKUMAR, S/O.SURENDRAN,
KOCHUKARIYIL HOUSE, VAYALAR WEST.P.O., CHERTHALA.**
 - 3. THE UNITED INDIA INSURANCE CO.LTD.,
DIVISIONAL OFFICE, MALANKARA BUILDINGS, PALAYAM
THIRUVANANTHAPURAM.**

R1 BY GOVERNMENT PLEADER

**R2 BY ADVS. SRI.C.V.MANUVILSAN
SRI.T.K.SUJITH**

R3 BY ADV. SRI.RAJESH THOMAS

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.1130 of 2008

Dated this the 9th day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

The appeal is filed by the claimants before the Tribunal. It is a case of death of the wife of appellant No.1 and their small child aged 4 at the time of accident is the appellant No.2 and mother of the deceased is appellant No.3.

2. It is a case where both the husband and wife were injured in the accident and he had filed O.P.(M.V.) 1920/1999 claiming compensation for personal injuries sustained by him which was disposed of along with the present case. He was travelling along with his wife Mini and the daughter through Alappuzha-Ernakulam National Highway. Near Puthiyakavu junction, the scooter was hit by a Fire Force vehicle having No.KL-01/H/6493. All of them fell down and sustained severe injuries.

3. Immediately they were admitted in KVM Hospital

and later they were referred to Medical College Hospital, Alappuzha. Due to the impact of the injuries sustained in the accident she died.

4. It is seen that the deceased was aged 27 at the time of the accident. We are only concerned with the quantum of compensation. With regard to the monthly income it is claimed that she was getting Rs.6,000/- from her small scale industry. The conduct of the unit is supported by Ext.A16 provisional registration certificate issued by the Assistant District Industries Officer, Cherthala. Ext.A17 is the certificate issued by the Village Officer, Kadakarappally wherein the annual income is noted as Rs.72,000/-. He was examined as PW2 also. The learned Tribunal fixed the monthly income only at Rs.2,000/-. Learned counsel for the appellants Sri. J. Omprakash submitted that the same is too low and no amount has been reckoned towards future prospects of the deceased. It is also submitted that it was a coir making unit and therefore there were good prospects in the business.

5. Learned counsel for the Insurance Company

submitted that the accident occurred in the year 1999. Only on the basis of the certificate issued by the Village Officer, the quantum cannot be assessed.

6. Apart from the evidence oral and documentary of the Village Officer there is evidence to the effect that she was running a small scale industry, which is supported by Ext.A16 provisional registration certificate. There is nothing to disbelieve the claim of the appellants as regards the deceased's business activity. Considering the various aspects including the future prospects of the deceased, we fix an amount of Rs.5,000/- as monthly income for the purpose of assessing compensation. Since the claimants are three in number $\frac{1}{3}^{\text{rd}}$ of the said amount will have to be deducted for personal expenses of the deceased. As she was aged 27 the multiplier will be 17.

7. The learned Tribunal has granted only Rs.10,000/- each towards loss of love and affection and loss of consortium. For pain and suffering the amount granted is Rs.5,000/-, for funeral expenses it is Rs.3,000/-, Rs.2,000/- is granted towards ambulance charges, Rs.1,000/- is further

granted towards damage to clothing and articles and other incidental expenses. The total amount awarded by the Tribunal including for loss of dependency is Rs.3,19,000/-. We are of the view that for loss of consortium and loss of love and affection the claimants are entitled at the rate of Rs.1,00,000/-. In the light of the judgment of the Apex Court in **Rajesh v. Rajbir Singh [2013 (3) KLT 89 (SC)]** and the decisions following the same for funeral expenses we grant an amount of Rs.15,000/-. Nothing has been granted towards loss of estate and we fix an amount of Rs.30,000/- for loss of estate. Accordingly, we recompute the compensation in the following manner:

Head of claim	Amount re-fixed by this Court Rs.
Loss of dependency	680000 (5000x12x17x2/3)
Pain and suffering	10000
Funeral expenses	15000
Ambulance charges	2000
Damage to clothing	1000
Loss of estate	30000
Loss of consortium	100000
Loss of love and affection	100000
Total	938000

Accordingly, we re-fix the compensation to Rs.9,38,000/- (Rupees nine lakhs thirty eight thousand only). It is submitted by the learned counsel for the appellants that the total claim was for Rs.15 lakhs and it was limited to Rs.7,20,000/-. We have fixed the compensation more than the amount claimed and in the light of the decision in Rajesh's case (supra) there will not be any bar in granting just and fair compensation irrespective of the amount claimed. But the appellants are liable to pay balance court fee for the amount granted by this court. It will be recovered by the Tribunal from the amount to be deposited by the Insurance Company pursuant to the judgment of this court.

8. Accordingly, the total compensation is fixed as Rs.9,38,000/- and we grant interest at the rate of 9% per annum for the enhanced compensation from the date of filing of the petition till realisation. Out of the total enhanced compensation, the third appellant is granted an amount of Rs.75,000/- (Rupees seventy five thousand only) along with interest and the remaining amount shall be

shared equally by appellants 1 & 2.

9. 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 and we permit the claimants to withdraw the amount when the amount is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

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P.A. TO JUDGE

shg/