

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

MACA.No. 2843 of 2014 ()

AGAINST THE AWARD IN OPMV 1050/2009 of MACT, IRINJALAKUDA DATED
05-07-2014

APPELLANTS/PETITIONERS :

1. SANTHA CHANDRAN
W/O. LATE CHANDRAN NAIR @ SREERAMACHANDRAN
MUDAVAKATTIL HOUSE, VATTANATHRA DESOM
AMBALLUR VILLAGE, MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

2. VENU
S/O. LATE CHANDRAN NAIR @ SREERAMACHANDRAN
MUDAVAKATTIL HOUSE, VATTANATHRA DESOM
AMBALLUR VILLAGE, MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

3. SHENU
S/O. LATE CHANDRAN NAIR @ SREERAMACHANDRAN
MUDAVAKATTIL HOUSE, VATTANTHARA DESOM
AMBALLUR VILLAGE, MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

BY ADV. SRI.V.BINOY RAM

RESPONDENTS/RESPONDENTS :

1. T.SEKHAR
S/O. THANGAVEL, 10, SSS BUILDING
A.V.ROAD, CHAMRAJPET, BANGALORE-560 018.

2. RAJINI V.
S/O. VENUGOPAL, THOTTATHIL HOUSE, 5/498
GOODAMALAI VILLAGE, DESOM, GANGAVALLI TALUK
SALEM DISTRICT, TAMILNADU, PIN-636 105.

3. THE MANAGER
NATIONAL INSURANCE CO. LTD., CUDDALORE, MAIN ROAD
P.B.NO.7, ATUR, SALEM DISTRICT
TAMILNADU, PIN-636 102.

4. THANKAMMA
W/O. LATE RAMAN NAIR, MUDAVANKATTIL HOUSE
C/O. DEVI UNNIKRISHNAN, MUDAVANKATTIL HOUSE
ANCHERI DESOM, OLLUR VILLAGE, P.O.
THRISSUR DISTRICT-680 306.

R3 BY ADV. SMT.P.K.SANTHAMMA
BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.2843 OF 2014

Dated this the 11th day of June, 2015

JUDGMENT

Jyothindranath, J.

This appeal came up for admission today. The appeal is preferred by the claimants in O.P.(MV)No.1050/2009 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda. The only question is regarding the quantum of compensation. The Insurance Company is also represented by its counsel. The policy is admitted. We heard the matter.

2. The claim petition was filed seeking compensation in respect of the death of late Sri.Chandran Nair who died in an accident occurred on 12.2.2007 at about 7.30 p.m. The case of the appellants is that while the deceased was driving an autorickshaw bearing Reg.No.KL-8/AB 6842, it hit against a heavy goods vehicle bearing Reg.No.KA-1/C 7729. The court below found the cause of the accident as the negligence of the driver of the goods vehicle and awarded a total

compensation of ₹5,10,660/-.

3. After considering the submission of the learned counsel for the appellant as well as the learned counsel for the Insurance Company, it is found that this appeal itself can be disposed of at this stage itself.

4. The main grievance is that even though the deceased was an autorickshaw driver, the monthly income taken for assessing the loss of dependency is only ₹4025/-. It is the submission that the fact that the accident occurred while the deceased was driving the autorickshaw has not been taken into consideration by the Tribunal. It is also the submission that no amount is granted towards loss of love and affection . It is also the submission that even though the appellants are only three in number, the fourth respondent is none other than the mother of the deceased, who is also a claimant. It is also the submission that the Tribunal erred in deducting 1/3 for the personal expenses of the deceased. It is also pointed out that while apportioning the compensation amount, the Tribunal has given ₹ 30,000/- to the fourth respondent. Under such circumstances, in the light of the dictum laid down by the Apex Court in Sarla Varma v.

Delhi Transport Corporation (2010 (2) KLT 802 (SC), $\frac{1}{4}$ need be deducted for the personal expenses of the deceased.

5. Accordingly, the compensation is re-fixed in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transport to hospital	1000
Damage to clothing	500
Medical expenses	9960
Funeral expenses	25000
Pain and suffering	15000
Loss of dependency	445500 (4500 x 12 x 11 x $\frac{3}{4}$)
Loss of love and affection	10000
Loss of estate	35000
Loss of consortium	100000
Total	641960 (Rupees six lakhs forty one thousand nine hundred sixty only)

6. The enhanced compensation will carry interest @ 9% per annum from the date of petition. We direct the Insurance Company to deposit the amount less the amount already deposited before the

Tribunal within a period of three months. From the enhanced compensation ₹20,000/- shall be given to the fourth respondent and the balance amount shall be shared equally in between the appellants.

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.