

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

MACA.No. 1387 of 2008 ()

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AGAINST THE AWARD IN MVOP 1266/2002 of MACT, IRINJALAKUDA
DATED 14-12-2007
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APPELLANT(S)/APPELLANTS/PETITIONERS IN THE ORIGINAL PETITION:

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- 1. RAJANI, AGED 22 YEARS, W/O RAJESH,
MANAYATHUKUDI HOUSE, MONODY, VELLIKULANGARA VILLAGE
MUKUNDAPURAM TALUK.**
 - 2. BABY RAJANI, AGED 10 MONTHS, D/O LATE RAJESH,
MANAYATHUKUDI HOUSE, MONODY
VELLIKULANGARA VILLAGE, MUKUNDAPURAM TALUK.**
 - 3. M.R. VELAYUDHAN, S/O RAMAN,
MANAYATHUKUDI HOUSE, MONODY, VELLIKULANGARA VILLAGE
MUKUNDAPURAM TALUK**
 - 4. SAROJINI, W/O VELAYUDHAN,
MANAYATHUKUDI HOUSE, MONODY, VELLIKULANGARA VILLAGE
MUKUNDAPURAM TALUK**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S):

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- 1. JAYAN, S/O NARAYANAN, PANGAPULY HOUSE,
POTTA DESOM, PERAMBRA VILLAGE**
 - 2. GENERAL MANAGER, "SOUPARNIKA"
NAYARAMBALAM, ERNAKULAM DISTRICT**
 - 3. THE MANAGER, ORIENTAL INSURANCE
COMPANY LTD., CHALAKUDY BRANCH.**

**R3 BY ADV. SRI.MATHEWS JACOB (SR.)
BY ADV. SRI.P.JACOB MATHEW**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

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

M.A.C.A.No.1387 of 2008

Dated this the 13th day of July, 2015

JUDGMENT

K.P.Jyothindranath, J.

This appeal is preferred by the applicant in OP (MV)No.1266/2002 on the files of the Motor Accidents Claims Tribunal, Irinjalakuda to challenge the quantum of compensation awarded by the Tribunal.

2. The facts are the following:- The deceased Rajesh was riding a motor cycle bearing Reg.No.KL.7/J 2247. It collided with a Jeep bearing Reg.No.KL.7/C 5407 and in that accident, he sustained fatal injuries and later he succumbed to the injuries on the same day. The appellants herein who are the legal heirs moved a claim for compensation before the Tribunal and the Tribunal awarded a total compensation of Rs.3,59,000/-. Aggrieved by the quantum of compensation awarded, this appeal is preferred.

3. When the appeal came up for hearing, the learned counsel for the appellant argued before us that the deceased was aged only 32 years at the time of accident and he left behind his wife, who is aged only 22 years and a child only aged ten months. It is also the submission that his parents were also depending upon him. It is further submitted before us that he was conducting a vehicle body building shop, which is evidenced from Exts.A5 and A6. Even though, those documents were produced before the Tribunal, only a notional income of Rs.2,250/- is adopted by the Tribunal. It is the submission that his income should have been taken at least as Rs.6,000/-, as he was a vehicle body building contractor. It is the further submission that no sufficient amounts are awarded towards the loss of consortium, loss of love affection and loss of estate and an interference by this Court is warranted.

4. We heard the learned counsel for the insurance company.

5. It is submitted before us that the accident was in the year 2002. Even though, Exts.A5 and A6 give

some indication regarding the firm which was conducted by the deceased, but there is no positive evidence regarding his income. Under such circumstances, the Tribunal correctly adopted an income of Rs.2,250/- per month. It is also the submission that after considering the date of accident and all other circumstances, the Tribunal awarded a just and fair compensation.

6. In this case, the accident had occurred in the year 2002. The age of the deceased was shown as 30 years in the Postmortem certificate. The first petitioner was seen aged only 22 years at that time. The second petitioner is a minor child aged only 9 months. Considering Exts.A5 and A6, as well as the period in which the accident occurred, we feel that it will be only just and proper to adopt Rs.4,500/- as the monthly income of the deceased for calculation purposes. Considering his age, a multiple of '17' will be available in view of the principles laid down in **Sarala Varma v. Delhi Transport Corporation** [2010 (2) KLT 802 (SC)].

7. In this case, there are four claimants. Then the amount that has to be deducted towards personal

expenses will be $\frac{1}{4}$. Apart from this, considering the fact that the first petitioner is aged only 22 years, it will be only just and proper to award Rs.1,00,000/- towards loss of consortium. Considering the fact that the second petitioner is aged only 9 months at the time of accident and the first petitioner was very young, a sum of Rs.1,00,000/- is entitled to be granted towards compensation for loss of love and affection. It is also pertinent to note that 3rd and 4th petitioners are the parents of the deceased. Thus the just compensation is assessed as follows.

Head of claim	Amount Awarded in rupees
(a) Loss of dependency (4500x12x17x3/4)	Rs.6,88,500/-
(b) Loss of Consortium	Rs.1,00,000/-
(c) Loss of love and affection	Rs.1,00,000/-
(d) Funeral expenses	Rs.25,000/-
(e) Loss of estate	Rs.35,000/-
(f) Pain and suffering	Rs.10,000/-
(g) Transportation expenses	Rs.3,000/-
Total	Rs.9,61,500/-(Rupees Nine lakhs sixty one thousand and five hundred only)

8. Thus the appellants are entitled for a total compensation of Rs.9,61,500/- (Rupees Nine lakhs sixty

one thousand and five hundred only). The enhanced compensation will bear 9% interest from the date of petition. Third respondent Insurance company shall deposit the amount within three months from this order. From the enhanced compensation, 50% of the enhanced compensation with interest shall be paid to the first petitioner who is the wife of the deceased. 30% of the enhanced compensation with interest shall be entitled to be paid to the second petitioner who is the minor child. The balance amount with interest shall be shared equally in between the 3rd and 4th appellants. The enhanced compensation of the second appellant, who is the minor child, shall be deposited in a nationalised bank till his attainment of majority. The compensation of 1st, 3rd and 4th appellants shall be released. Parties shall bear cost in the appeal.

The appeal is allowed.

Sd/-

T.R.RAMACHANDRAN NAIR, JUDGE

Sd/-

K.P.JYOTHINDRANATH, JUDGE

VS