

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 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

MACA.No. 3088 of 2014 ()

AGAINST THE AWARD IN OPMV 85/2012 of M.A.C.T., ERNAKULAM DATED
02-08-2014

APPELLANTS/PETITIONERS:

1. PRABHA K.K AGED 43 YEARS
W/O.LATE SIVASANKARAN, MEENATHERIL LAKSHAM VEEDU
MUTTOM P.O, HARIPAD, PALLIPART VILLAGE
ALAPPUZHA.

2. SREELAKSHMI P AGED 21 YEARS
D/O.LATE SIVASANKARAN, MEENATHERIL LAKSHAM VEEDU
MUTTOM P.O, HARIPAD, PALLIPART VILLAGE
ALAPPUZHA.

BY ADVS.SRI.MATHEWS K.PHILIP
SMT.T.MANASY

RESPONDENTS/RESPONDENTS:

1. ABHILASH VIJAYAN
S/O.VIJAYAN, MADAMPURATH HOUSE, BALAGRAM P.O
KOCHUPLAMOOD BHAGOM, KARUNAPURAM VILLAGE
UDUMPANCHOLA TALUK, IDUKKI DISTRICT.

2. NOBLE KURIAKOSE
24/211B, KANJIRATHINKAL HOUSE, HILLPALACE ROAD
TRIPUNITHURA P.O, NADAMA VILLAGE, ERNAKULAM DISTRICT.

3. RELIANCE GENERAL INSURANCE COMPANY LIMITED
SHANMUGHAM ROAD, ERNAKULAM.

R3 BY ADV. SRI.K.B.RAMANAND

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A.No.3088 OF 2014

Dated this the 13th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The short question that arises in this appeal is as to whether the Tribunal was justified in not accepting the monthly income of the deceased as ₹18,000/-. The accident occurred on 13.7.2011 at about 1.15 a.m. . The deceased Sri.Praveen Sankar was travelling in a van bearing Reg.No.KL39/C 8998 through Puthiyakavu-Tripunithura Road. At a place called Choorakkad bhagom, the van hit on a wall and the deceased sustained injuries. On the way to the hospital, he died.

2. We are not going into the details of the evidence regarding negligence since it is not disputed in this appeal. The appellants claimed that the deceased was aged 21 years and was doing fabrication and welding work in an advertising company being managed by the second respondent. To support the plea that the deceased was getting ₹18,000/- per month, Ext.A12 salary certificate was produced. The

proprietor of the company was not examined. The proprietor of the company is actually the second respondent before the Tribunal namely the owner of the vehicle also.

3. The learned counsel for the appellant submitted that the second respondent in his written statement had admitted that the deceased was one of his employees and he was doing fabrication and welding work. This is clear from paragraph 4 of the award. The learned counsel for the Insurance Company submits that rightly the Tribunal did not rely upon the salary certificate since it is exorbitant, that also going by the age of the deceased. The appellants are his mother and sister and his father is also no more.

4. The learned counsel for the Insurance Company further submits that the deceased being a Bachelor, for personal expenses, $\frac{1}{2}$ had to be deducted going by the judgment in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**, whereas in this case $\frac{1}{3}$ alone had been deducted. Therefore the learned counsel submits that adequate compensation has been granted.

5. We find that the Tribunal has taken ₹4,000/- as the monthly

income. Since the deceased was employed as a Welder and was doing fabrication work, which is admitted in the written statement filed by the second respondent before the Tribunal, we are of the view that if ₹6,000/- is fixed as the monthly income, the same will be reasonable, which will be only 1/3 of the amount claimed in the petition. The same is so since the accident is of the year 2011. But 50% of the income will have to be deducted towards personal expenses and therefore the balance will be ₹3,000/- per month. The multiplier being 18, the dependency compensation will be ₹6,48,000/- (3000 x 12 x 18).

6. It is seen that for pain and suffering, nothing has been granted by the Tribunal. For funeral expenses, ₹25,000/-, towards transport to hospital, ₹2500/-, towards loss of love and affection ₹1,00,000/-, for mental agony caused to the appellants, ₹1,00,000/- has been granted. It is submitted by the learned counsel for the Insurance Company that the amount of ₹1 lakh granted towards mental agony is on a higher side. We are also of the view that the claimants have been adequately compensated under the head of compensation for loss of love and affection and compensation for mental agony as well as

dependency compensation. Therefore even if no separate amount has been granted for pain and suffering of the deceased, the award granted will be just and fair compensation.

7. The Tribunal has fixed the compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transport to hospital	2500
Funeral expenses	25000
Compensation for love and affection	100000
Compensation for mental agony caused to the petitioners due to sudden tragic death	100000
Loss of dependency	576072
Total	803572

8. We refix the compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transport to hospital	2500
Funeral expenses	25000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Compensation for love and affection	100000
Compensation for mental agony caused to the petitioners due to sudden tragic death	100000
Loss of dependency	648000
Total	875500 (Rupees eight lakhs seventy five thousand five hundred only)

9. The amount will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited, if any, within a period of three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.

