

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

MACA.No. 2600 of 2010 ()

AGAINST THE AWARD IN OP(MV) 475/2004 OF ADDITIONAL MOTOR ACCIDENTS CLAIMS
TRIBUNAL, ALAPPUZHA DATED 06-08-2009

APPELLANTS:

1. ELIZABATH @ ELSAMMA, AGED 44 YEARS
W/O.MICHAEL @ MATHAI, NADIYIL HOUSE, M.P.WARD 16
MANNANCHERRY P.O., ALAPPUZHA
2. JOMON M, (AGED 22)
S/O.MICHEAL @ MATHAI, NADIYIL HOUSE
M.P.WARD 16, MANNANCHERRY P.O, ALAPPUZHA
3. JOSNA M,(MINOR AGED 17),
D/O.MICHEAL @ MATHAI, NADIYIL HOUSE, M.P.WARD 16
MANNANCHERRY P.O, ALAPPUZHA
4. MATHEN ANTONY,
FATHER OF MICHEAL @ MATHAI, AGED 81 YEARS
NADIYIL HOUSE, M.P.WARD 16, MANNANCHERRY P.O.
ALAPPUZHA (DIED)
5. ELIKUTTY, AGED 76 YEARS,
MOTHER OF MICHEAL @ MATHAI, NADIYIL HOUSE, M.P.WARD 16
MANNANCHERRY P.O., ALAPPUZHA

(MINOR PETITINER 3 IS REPRESENTED BY THEIR MOTHER
& LEGAL GRARDIAN 1ST PETITIONER ELIZABATH)

BY ADVS.SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA

MACA.No. 2600 of 2010 ()

RESPONDENTS:

- 1. RAJAPPAN NAIR, LAKSHMI NIVAS
S.N.PURAM P.O., CHERTHALA 688 582**
 - 2. BABU.A.,
AYYANKOVIL MADAOM HOUSE, PALLIPURAM P.O., CHERTHALA 688 541**
 - 3. UNITED INDIA INSURANCE CO-LTD,
REP.BY ITS DIVISIONAL MANAGER, DIVISIONAL OFFICE
MULLACKAL, ALAPPUZHA 688 001**
- R-2 BY ADVS. SRI.G.D.PANICKER
SMT.JEENA JOSEPH**
- R3 BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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

M.A.C.A.No.2600 of 2010

Dated this the 3rd day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

The wife and the children along with the mother of the deceased are the appellants. He died in an accident which occurred on 11.10.2003. He was riding his motorcycle bearing registration No.4M/7430 along Alappuzha - Ernakulam NH road and near Mayithara the accident occurred. It was hit by a lorry, causing him to fall down on the road. It is stated that he sustained serious injuries and died on the spot.

2. We are only on the question of quantum of compensation. Learned counsel for the appellants submitted that he was a proprietor of a firm (coir factory) and there were 3 other employees in addition to the deceased. In support of the said claim Ext.A9 certificate issued by the Mannancherry Grama Panchayat was produced. It is stated therein that the deceased was running

a coir factory with 4 looms for the last 17 years and he was getting Rs.7,000/- per month as income. The widow was examined as PW1. She had stated that he was getting Rs.8,000/- per month. In support of the claim they have also produced Ext.A10 order book to show the details of the work and Ext.A11 showing professional tax paid by him. After considering various aspects the Tribunal fixed the income of the deceased at Rs.4,000/- per month.

3. Learned Senior Counsel for the Insurance Company submitted that the legal heirs will be inheriting the unit and therefore there is no total loss to the family. But according to us, as far as the said aspect is concerned, apart from the fact that the widow and children may have to employ another person as substitute in his place to do work in the coir unit what we have to consider is the amount towards loss of services of the deceased to the family, also. Therefore we will be justified in accepting the monthly income as Rs.5,000/- per month for calculating the compensation. He was 43 years and hence the multiplier

going by the decision of the Apex Court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** will be 14, which we adopt. Initially the father had also joined as a claimant but after his demise only the present appellants are there to claim compensation. Going by the aforesaid judgment, $1/4^{\text{th}}$ of the income will have to be deducted for personal expenses of the deceased.

4. The appellants will also be entitled for amount towards loss of consortium and loss of love and affection at the rate of Rs.1,00,000/- each and for funeral expenses, we grant Rs.15,000/- since the accident was of the year 2003. For pain and suffering nothing has been granted by the Tribunal and even though the death was instantaneous he had suffered very serious injuries. Therefore, we fix the amount at Rs.10,000/- under the said head. Accordingly, we recompute the compensation in the following manner:

Head of claim	Amount awarded in Rs.
Transportation expenses	2000
Loss of consortium	100000

Head of claim	Amount awarded in Rs.
Funeral expenses	15000
Pain and suffering	10000
Loss of estate	25000
Loss towards dependency	5000x12x14x3/4 630000
Loss of love and affection	100000
Total	8,82,000 (Rupees eight lakhs eighty two thousand only)

Out of the enhanced compensation, 50% along with interest is earmarked to the first appellant widow, 20% with interest each to appellants 2 & 3 and the balance 10% with interest to the fifth appellant mother.

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

There will be a direction to the third respondent Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On deposit, the

appellants will be entitled for the release of the amount.

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

//True copy//

P.A. TO JUDGE

shg/