

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 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

MACA.No. 2671 of 2010 ()

AGAINST THE AWARD IN OPMV 1813/2002 of SPL.COURT FOR EC ACT CASES
&MACT,TSR DATED 18-05-2009
APPELLANT(S)/PETITIONERS 2 TO 6:

1. AISUMMA AND OTHERS
PULAKKA VEETIL, P.O.PUNNAYUR, CHAVAKKAD TALUK
THRISSUR DISTRICT.

2. ASHRAF, S/O.MOITHU HAJI,
PULAKKA VEETIL, P.O.PUNNAYUR, CHAVAKKAD TALUK
THRISSUR DISTRICT.

3. SUHARA, W/O.MOHAMMEDUNNI,
PALLIMANJALAYIL HOUSE, ANAKKARA VILLAGE
KODALLUR AMSOM, OTTAPPALAM.

4. SAFIYA, W/O.BEERAVU,
KAITHAPARAMBATH HOUSE, PERUMBADAPPU VILLAGE
AYIROOR AMSOM, KODATHOOR DESOM, PONNANI TALUK.

5. RAHIYANATHU, W/O.MOULANA SAHEED,
MANGALAM VILLAGE, THIROOR TALUK.

BY ADV. SRI.K.I.SAGEER

RESPONDENT(S):RESPONDENTS 1 AND 2

1. T.ANEESH KUMAR AND ANOTHER
KUTTIPOORICHA PARAMBA P.O., CHITTARIPARAMBA
MANATHERI AMSOM, DESOM, KOTHUPARAMBA
KANNUR DISTRICT, PIN-670650.

2. UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, THALASSERY, PIN-670101.

R2 BY ADV. SRI.MATHEWS JACOB (SR.)

R2 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2671 OF 2010

Dated this the 7th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimants before the Tribunal, aggrieved by the inadequacy of compensation. They are the mother, brother and sisters of one Shihabudheen who died in an accident which occurred on 29.12.2000. He was going to Kozhikode along with his friends, in a car bearing Reg. No.KL-8B 8737 from their native place, viz. Punnayur and when the car reached near Feroke Check Post, the offending vehicle, a lorry bearing Reg. No.KL 13/C 1236 hit the car and this resulted in death of two persons and later, another person also succumbed to the injuries. Two other persons had sustained serious injuries. Late Shihabudheen was driving the car.

2. Learned counsel for the appellant submitted that adequate compensation has not been granted by the Tribunal. The monthly

income has been fixed only at Rs.2,000/- in spite of the evidence that he was working in Bombay in a music shop as Managing Partner.

3. We heard learned counsel for the insurance company also.

4. Apart from the same, the further contention is that the finding on negligence and the apportionment of the same as against the deceased Shihabudheen is also not correct. As regards the finding on composite negligence, the Tribunal ultimately held that it will have to be apportioned as 50 : 50 between the two drivers. Learned counsel for the appellant submitted that the Tribunal ought to have accepted the evidence of P.Ws.1 and 2 who are independent witnesses.

5. Learned Senior Counsel for the insurance company submitted that the car was evidently on the wrong side.

6. We have considered the rival submissions. The scene mahazar shows that the spot of accident is northern side of east west lying public road. The car was proceeding from east to west. The road has 14 metres width and the accident took place 3.60 metres towards south from northern end of the public road. Learned counsel for the appellant submitted that actually the car was pulled towards that side after the accident.

7. The Tribunal has referred to the evidence of P.W.2 who was

examined by the claimants to prove the accident. In the cross examination he did not deny the suggestion that the accident occurred on the northern side of the road. This persuaded the Tribunal to reject the contentions of the appellants. According to us, since the scene mahazar shows the spot of accident as on the northern side of the road, there is no reason to interfere with the finding.

8. As regards the quantum of compensation, we refix the monthly income at Rs.4,000/-. The Tribunal has adopted the age of the mother for fixing the multiplier as 11, which is not correct in the light of the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC). The deceased was a bachelor. For loss of love and affection, the Tribunal has granted only a sum of Rs.10,000/- and for loss of estate another sum of Rs.10,000/- has been granted. Considering the fact that he was only aged 26, the multiplier will be 17.

Therefore, the compensation is recomputed in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>
Expenses for transportation	2000
Damage to clothing	500
Funeral expenses	15000

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>
Pain and suffering	15000
Loss of love and affection	100000
Loss of dependency	(4000 x 12 x 17 x ½) 408000
Loss of estate	30000
Total	570500

The liability of the second respondent insurance company will be 50%. Therefore, there will be a direction to the second respondent insurance company to deposit an amount of Rs.2,85,250/- with interest less the amount already deposited. The enhanced amount of compensation will carry interest at 9% per annum from the date of filing of the petition and the amount will be deposited within a period of three months. Out of the total compensation, 50% along with interest is earmarked to be paid to appellant No.1 and the remaining amount with interest will be shared equally by the other appellants.

The appeal is allowed as above. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH, JUDGE.)

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