

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

MACA.No. 3062 of 2009 ()

AGAINST THE AWARD IN OPMV 1298/2003 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA DATED 23-05-2008

APPELLANTS/PETITIONERS:

1. LEELAMMA AGED 32 YEARS,
W/O. DECEASED BENNY GEORGE, MUTHUPLAKKAL HOUSE
P.O. PULLIPADAM, MALAPPURAM DISTRICT.
2. LIBIN JOSEPH, AGED 13 YEARS, MINOR REP.
BY HIS MOTHER LEELAMMA, MUTHUPLAKKAL HOUS
P.O.PULLIPADAM, MALAPPURAM DISTRICT.
3. LINSE JOSEPH, AGED 11 YEARS,
MINOR REP. BY HIS MOTHER LEELAMMA, MUTHUPLAKKAL, HOUSE
P.O.PULLIPADM, MALAPPURAM DISTRICT.
4. LIJO JOSEPH, AGED 10 YEARS,
MINOR REP. BY HIS MOTHER LEELAMMA
MUTHUPLAKKAL HOUSE, P.O.PULLIPADAM, MALAPPURAM
DISTRICT.
5. VARKEY.M.V. AGED 60 YEARS,
MUTHUPLAKKAL HOUSE, P.O.PULLIPADAM
MALAPPURAM DISTRICT.
6. ELIKUTTY, AGED 56 YEARS,
MUTHUPLAKKAL HOUSE, P.O.PULLIPADAM
MALAPPURAM DISTRICT.

BY ADV. SMT.SADHANA KUMARI ESWARI

RESPONDENTS/ RESPONDENTS:

1. THIRU M.ELANKO, S/O. MARUDAMUTHU,
1/22-B, NORTH STREET, MADURAPURI.P.O.
THURAYOOR DISTRICT, THIRUCHIRAPALLY.
2. C.THANKA RAJU, S/O. CHIDAMBARAM,
1/137 SIVAN KOIL STREET, NAKKA SELAM, PERUMBALLUR.
3. THE MANAGER, NEW INDIA ASSURANCE CO. LTD
613-MADANA GOPALAPURAM, PERAMBALLUR.

R,R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.3062 of 2009

Dated this the 2nd day of March 2015

JUDGMENT

Asha, J.,

The appellants are the widow, three children and parents of the deceased Benny George who met with an accident on 25.7.2003. The jeep in which the deceased was travelling collided with a lorry and he sustained very serious injuries and succumbed to the same on the same day.

2. The claim petition was filed before the Tribunal seeking compensation to the tune of Rs. 5 lakhs. The Tribunal awarded a sum of Rs. 3,35,000/- only.

3. This appeal is filed seeking enhancement of compensation on the ground that the amount awarded under various heads are thoroughly inadequate.

4. The deceased was working as a labourer. It was claimed that he was earning a sum of Rs. 5,000/- per month. The Tribunal reckoned his income as Rs. 2,250/- and adopted the

M.A.C.A. No.3062 of 2009 :2:

multiplier as 16. A sum of Rs. 2,88,000/- was awarded under the head dependency compensation. Learned counsel for the appellants submitted that the deceased was only aged 35 at the time of the accident and the multiplier adopted is not correct. But no such contention is seen raised in the appeal. On the other hand the averments in the appeal are to the effect that the deceased was aged 36. As per the decision of the Apex court in ***Sarla Verma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]***, the proper multiplier in the case of a person aged 36 is 15. As the deceased was stated to be a labourer, we adopt the monthly income at the rate of Rs. 3,500/- having regard to the wage structure prevailed at the relevant time of accident. Accordingly, the dependency compensation is re-fixed as Rs. $3,500 \times 12 \times 15 \times \frac{3}{4}$ which will come to Rs. 4,72,500/-. The Tribunal has deducted $\frac{1}{3}$ towards his personal expenses. In this case, there were six dependants. i.e. widow, children and parents. Therefore, $\frac{1}{4}$ of the income is deducted towards personal expenses.

5. Under the conventional heads of compensation towards funeral expenses, loss of consortium, loss of love and affection

M.A.C.A. No.3062 of 2009 :3:

etc. the Tribunal has awarded a sum of Rs. 3,000/-, Rs.5,000/- and Rs. 20,000/- respectively. In the light of the decision of the Apex Court in Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC), we award a sum of Rs. 25,000/- towards funeral expenses and Rs. 1 lakh towards loss of consortium to the widow. As there were three children and parents, we award a sum of Rs. 1,50,000/- towards loss of love and affection. The compensation awarded under the head of pain and suffering is enhanced to Rs. 10,000/-. The Tribunal has not granted any amount towards loss of estate. Therefore, we award a sum of Rs. 25,000/- towards loss of estate. Accordingly, the award is modified as follows:

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded</i>	<i>Amount modified.</i>
1	Loss of dependency	288000	472500
2	Pain and suffering	5000	10000
3	Loss of consortium	15000	100000
4	Loss of love and affection	20000	150000
5	Funeral expenses	4000	25000
6	Transportation expenses	3000	3000
7	Loss of estate	-	25000
	Total	335000	785500

6. Thus the total compensation will be Rs. 7,85,500/- (Rupees Seven lakh Eighty Five thousand Five hundred only) and

M.A.C.A. No.3062 of 2009 :4:

the enhanced compensation will carry interest at the rate of 9% p.a. in the light of the judgment of the apex court in **Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513].

7. Out of the total compensation, a sum of Rs. 20,000/- each will be given to the parents/appellants 5 & 6 and Rs. 75,000/- each to the appellants 2 to 4 and the balance amount will be paid to the widow, the first appellant along with interest.

8. The Insurance Company is directed to deposit the entire amount, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment. The court fee if any in deficit will be deducted before disbursing the award amount to the claimants.

The appeal is allowed accordingly. No cost.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge