

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

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THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

MACA.No. 3343 of 2014 ()

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AGAINST THE AWARD IN OPMV 54/2008 of MACT, THODUPUZHA  
DATED 07-03-2014

APPELLANT(S)/PETITIONERS:

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1. VILASINI.A.K,  
AGED 45 YEARS,  
W/O.LATE SURESH, VARATTOOR HOUSE,  
RAMAKKALMEDU KARA,  
PARATHODE VILLAGE, IDUKKI DISTRICT.

2. VIBIN, AGED 22 YEARS  
S/O.LATE SURESH, VARATTOOR HOUSE,  
RAMAKKALMEDU KARA,  
PARATHODE VILLAGE, IDUKKI DISTRICT.

3. RESHMA, AGED 18 YEARS  
D/O.LATE SURESH, VARATTOOR HOUSE,  
RAMAKKALMEDU KARA,  
PARATHODE VILLAGE, IDUKKI DISTRICT.

BY ADV. SMT.BINITHA JAMES  
ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT(S)/RESPONDENTS:

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\*1. MANOJ, AGED 30 YEARS  
S/O.SANKARAN, PLATHOTTATHIL HOUSE, OORASSALA BHAGAM  
ARUNAPURAM.P.O., PULIYANNOOR VILLAGE, PALA  
KOTTAYAM DISTRICT - 686 575.

\*2. JITHU SATHEESAN  
EDAMANAPPURAM HOUSE, PULIYANNOOR.P.O., MUTHOLY  
PALA, KOTTAYAM DISTRICT - 686 575.

3. THE ORIENTAL INSURANCE CO. LTD.  
REPRESENTED BY ITS BRANCH MANAGER,  
JYOTHI SUPER BAZAR, THODUPUZHA. 685 585.

(\*Respondents 1 and 2 are deleted from the party array at the  
risk of the appellants as per order dated 13.03.2015 in  
I.A.No.949/15)

R3 BY ADV. SRI.MATHEWS JACOB (SR.)  
R3 BY ADV. SRI.P.JACOB MATHEW  
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY  
HEARD ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

**P.N.RAVINDRAN & P.V.ASHA, JJ.**

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M.A.C.A No.3343 of 2014-A  
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Dated this the 19<sup>th</sup> day of June, 2015

**JUDGMENT**

Asha, J.

The widow and two minor children are the appellants herein, seeking enhancement of compensation towards the death of Suresh in a motor vehicle accident. On 24.4.2007, the deceased Suresh was riding his motorcycle along Enthayar-Ramakalmedu road when a bus with registration No. KL.5R/2664 knocked him down causing fatal injuries. He was taken to Taluk Head Quarters Hospital, Kanjirappilly and thereafter to Medical College Hospital, Kottayam where he succumbed to the injuries on the same day.

2. The appellants filed a claim petition before the Motor Accident Claims Tribunal, Thodupuzha seeking compensation limiting it to Rs.5 lakhs. The Tribunal passed an award for Rs.6,29,000/- along with interest @ 8.5% per annum. The award is under challenge in this appeal, aggrieved by the inadequacy of compensation granted under various heads. An application for

amendment of the claim petition is also filed to seek enhanced amounts.

3. The deceased, who was aged 41 years, left behind him two minor children, aged 16 and 12 years respectively, and the widow, aged 39 years. Before the Tribunal, the appellants claimed that the deceased Suresh was a Coolie and was earning a monthly income of Rs.3,250/-. Considering the monthly income and inflation, The Tribunal, fixed the monthly income of the deceased as Rs.4,000/- and relying on the judgment of the Supreme Court in **Nagappa v. Gurudayal** [2003(1) KLT 115 (SC)], granted a total compensation of Rs.6,29,000/- in excess of what was claimed.

4. We heard the learned counsel appearing for the appellants as well as the learned counsel for the Insurance Company. According to the learned counsel for the appellants, the compensation awarded by the Tribunal under conventional heads like 'loss of consortium' and 'loss of love and affection', are on a lower side, going by the Judgment of the Apex Court in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)]. It is also pointed out that the Tribunal has not reckoned his income considering the future prospects, while assessing the

compensation towards loss of dependency.

5. The learned counsel for the Insurance Company opposed the claim of the appellants on the ground that the claim before the Tribunal was only for a sum of Rs.5 lakhs and the monthly income earned by the deceased was claimed only @ Rs.3,250/- whereas the Tribunal fixed the income at the rate of Rs.4,000/- per month and awarded compensation far in excess of their claim.

6. In the light of the judgment of the Supreme Court in **Nagappa v. Gurudayal** [2003(1) KLT 115(SC)], and a series of subsequent judgments, the Tribunal as well as this Court can award compensation in excess of the claims, in order to provide just compensation to the victims of accident/dependents of victims. Therefore we are unable to sustain the objection raised by the learned counsel for the Insurance Company.

7. The claim of the appellants that the deceased was a Coolie is not seen disputed seriously by the Insurance Company. Having regard to the wage structure prevailing in the State at the relevant time in 2007, and the judgment of the apex court in **Ramachandrappa V Royal Sundaram Alliance Insurance Co Ltd & others** [(2011) 13 SCC 236], wherein the monthly

income of a coolie was reckoned as Rs. 4500/- in respect of an accident of the year 2004, we are of the view that the monthly income of the deceased Coolie should have been reckoned at least at the rate of Rs.5000/-. As there are 3 dependants i.e a widow and 2 children,  $\frac{1}{3}^{\text{rd}}$  of the income was to be deducted towards personal expenses. As per the judgment of the Apex Court in **Munna Lal & Anr. v. Vipin Kumar Sharma & Ors.** [JT 2015 (5) SC 1], 30% of the income has to be added towards future prospects while calculating the compensation under the head 'loss of dependency', in respect of those in the age group of 40 to 50 years. As the deceased was aged 41 years, 30% of his monthly income has to be added towards future prospects, for arriving at the compensation towards loss of dependency and a multiplier of 14 is to be adopted. Since the deceased was aged 41 years, the proper multiplier is 14 and therefore the compensation under the head 'loss of dependency' will come to Rs.7,27,999.99/ ( $5000 \times \frac{130}{100} \times \frac{2}{3} \times 12 \times 14$ ), rounded off as 7,28,000/-.

8. The Tribunal has awarded only a sum of Rs.20,000/- towards funeral expenses, Rs.50,000/- towards loss of consortium and Rs.80,000/- towards loss of love and affection. In

view of the judgment of the Supreme Court in **Rajesh v. Rajbir Singh** (supra) and **Savita v. Bindar Singh & Ors.** [2014(4) SCC 505], the compensation under the above conventional heads are liable to be enhanced. The deceased left behind him the widow aged 39 and 2 minor children aged 16 and 12 years respectively. Therefore the appellants will be entitled to a sum of Rs.25,000/- towards funeral expenses; the widow will be entitled to a sum of Rs.1,00,000/- towards loss of consortium, since there are 2 minor children, they will be entitled to a sum of Rs.2 lakhs towards loss of love and affection, ie. Rs.1 lakh each. Accordingly, the award passed by the Tribunal is modified as follows:

| <i>Sl.No.</i> | <i>Head of claim</i>       | <i>Amt.Awarded by the Tribunal</i> | <i>Amt. modified</i>    |
|---------------|----------------------------|------------------------------------|-------------------------|
| 1             | Loss of dependency         | Rs. 4,48,000.00                    | Rs. 7,28,000.00         |
| 2             | Transportation expense     | Rs. 5,000.00                       | Rs. 5,000.00            |
| 3             | Funeral expenses           | Rs. 20,000.00                      | Rs. 25,000.00           |
| 4             | Damage to clothing         | Rs. 1,000.00                       | Rs. 1,000.00            |
| 5             | Pain and suffering         | Rs. 15,000.00                      | Rs. 15,000.00           |
| 6             | Loss of consortium         | Rs. 50,000.00                      | Rs. 1,00,000.00         |
| 7             | Loss of love and affection | Rs. 80,000.00                      | Rs. 2,00,000.00         |
| 8             | Loss of estate             | Rs. 10,000.00                      | Rs. 10,000.00           |
|               | <b>TOTAL</b>               | Rs. 6,29,000.00                    | <b>Rs. 10,84,000.00</b> |

Thus the appellants are entitled to a total compensation of Rs.10,84,000/- (Rupees Ten lakhs eighty four thousand only).The enhanced amount will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the entire amount of compensation within a period of three months and on such deposit being made, the appellants can withdraw the amount.

The appeal is accordingly allowed. No costs.

*Sd/-*

**(P.N.RAVINDRAN, JUDGE)**

*Sd/-*

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

rtr/

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P.S to Judge