

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

MACA.No. 3132 of 2009 ()

AGAINST THE AWARD IN OPMV 2126/2005 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE DATED 13-07-2009

APPELLANT(S)/PETITIONERS:

1. MARIYAMMA, W/O.KUNHOTHU HAJI,
AGED 81 YEARS. (DIED)

2. SUBAIDA, W/O.LATE P.K.MANZOOR,
AGED 37 YEARS.

3. P.K.ANZAR, S/O.LATE P.K.MANZOOR,

4. P.K.ASHITHA, D/O.LATE P.K.MANZOOR

(ALL ARE RESIDING AT PANIKKATH KANDY HOUSE
KANTHAPURAM P.O., UNNIKULAM, KOZHIKODE) .

*ADDITIONAL RESPONDENTS 5 TOP 11 ARE IMPEADED)

* ADDL. 5. AMINA.T.P.
THATTARUPARAMBIL VEEDU, UNNIKULAM (P.O.)
KOZHIKODE -673 574.

* ADDL. 6. KUNHIPATHUMMA
MUTHAVALLOOR (P.O), VIA KONDOTTY
MALAPPURAM - 673 638.

ADDL. 7. AYAMMAD.P.K.
PANIKKANDI VEEDU, UNNIKULAM (P.O.)
KAOZHIKODE - 673 574.

ADDL. 8. SAINABA.P.K.
CHELAKKOTH VEEDU, PUTHENKUNNU (P.O.), VIA CHEERAL
SULTHAN BATHERY, WAYANAD - 673 595.

ADDL. 9. SAFIYA.P.K.
PANIKKATHKANDI VEEDU, KANTHAPURAM, UNNIKULAM (P.O.)
KAOZHIKODE - 673 574.

ADDL. 10. SULAIMAN.P.K.
PANIKKATHKANDI VEEDU, KANTHAPURAM, UNNIKULAM (P.O.)
KAOZHIKODE - 673 574.

ADDL. 11. AYISHA.P.K.
PALAPPETTY HOUSE, PUTHENKUNNU (P.O.), SULTHAN BATHERY
WAYANAD - 673 595.

*(SUPPLEMENTAL APPELLANTS 5 TO 11 ARE IMPEADED AS LEGAL HEIRS OF THE
DECEASED 1ST APPELLANT AS PER ORDER DATED 28/01/2014 IN IA 224/2014).

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS/RESPONDENTS:

1. IBRAHIM,S/O.ABDULLA KOYA, VAYALIL HOUSE,
AVILORA P.O., KIZHAKKOTH, KODUVALLY
KOZHIKODE.

2. THE NATIONAL INSURANCE COMPANY LTD.
NOOR COMPLEX, MAVOOR ROAD, KOZHIKODE.

3. P.ASHI,S/O.RAMAN, PUTHALATH HOUSE,
CHERUKAD P.O., AHTIYODI, KOZHIKODE.

4. K.K.PAVAROOTTY, S/O.ABOOBACKER,
KARIMBAKANDY HUSE, KIZHAKKOTH P.O., KODUVALLY
KOZHIKODE.

R,R2 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.3132 of 2009

Dated this the 15th day of January 2015

JUDGMENT

Ramachandran Nair, J.,

Appellants are aggrieved by the inadequacy of compensation. They are the wife and children of the deceased Manzoor as well as the legal heirs of the mother of Manzoor who was the 4th claimant before the Tribunal. She was impleaded as the 4th appellant herein and she died while pending the proceedings and supplementary appellants 5 to 11 are her legal representatives.

2. The accident occurred in the year 2003 on 6.8.2003 while the deceased Manzoor was travelling as a pillion rider in a motor cycle bearing registration No. KL-11 N/3706 driven by the 4th respondent before the Tribunal. When the vehicle reached Padanilam bus stop, the K.S.R.T.C bus going in front of the motorcycle stopped at the bus stop. There was another motor cycle going in front of the bike viz. KL-11 R/6977. The rider of the above motorcycle, while trying to overtake the K.S.R.T.C. Bus, suddenly stopped seeing the bus. The motorcycle turned to the right side of the parked K.S.R.T.C bus. Therefore, the motorcycle in which the deceased was travelling and the motor cycle going in front collided together causing the accident.

3. He was taken to the Medical College Hospital, Kozhikode, where he

died on 3.9.2003. The Tribunal found on evidence of PW3, an independent witness that the accident occurred due to the negligent driving of both riders. Infact, that was the case of the claimants also, and the Tribunal apportioned the liability equally between the drivers of the two vehicles. As far as the liability of the Insurance Company is concerned, only the offending vehicle was insured.

4. The monthly income claimed is Rs. 4,000/-, he being a sales man in Unity store, Kanthapuram. Ext.A7 is the certificate ; but on the finding that no other documents have been produced, the Tribunal fixed the notional income at the rate of Rs. 2,000/-per month.

5. The widow was aged 37 at the time of the accident and the two minor children were also depending on the deceased. Going by the decision reported in **Sarala Varma v. Delhi Transport Corporation, [2010 (2) KLT 802 (SC)]** the multiplier applicable is 14.

6. The Tribunal has allowed meagre amounts towards loss of consortium and for loss of love and affection, funeral expenses, loss of estate, for pain and suffering etc. Since he was in the hospital for a period of 7 days and had suffered serious injuries we award a sum of Rs.20,000/- for pain and suffering.

7. Going by the decision of the Apex Court reported in Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC), we enhance the compensation towards loss of love and affection to Rs.1,00,000/-, for loss of consortium also we grant amount of Rs. 1 lakh and towards funeral expenses Rs.25,000/- is awarded.

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For loss of estate, an amount of Rs.20,000/- is awarded. The Tribunal has granted Rs.3,20,000/- towards dependency.

8. We are of the view that we will be justified in adopting Rs. 3,000/- as monthly income in the light of the evidence available. Therefore, towards loss of dependency the amount will be Rs. 3,78,000/-. (Rs.3,000x12x14x3/4), as 1/3 will have to be deducted towards personal expenses. Accordingly we modify the award as follows:

Sl.No.	Heads	Amt. Awarded	Modified award	Basis
1	Transportation to hospital	1000	1000	
2	Loss of consortium	7000	100000	
3	Loss of love and affection	7000	100000	
4	Loss of estate	5000	20000	
5	Funeral expenses	3000	25000	
6	Pain and suffering	5000	20000	
7	Loss of dependency	3,20,000	378000	
	Total	348000	6,44,000	

Thus the total compensation will be Rs. 6,44,000/- (Rupees Six lakh fourty four thousand only/-).

9. We are of the view that the interest at the rate of 7% p.a is too low and we fix the interest at the rate of 9% p.a from the date of petition by relying upon the decision of the apex court reported in ***Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. And Anr.[(2009)4 SCC 513]***.

10. The Insurance Company is directed to deposit their share of

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compensation less the amount already deposited within a period of three months. We maintain the direction issued to the Insurance Company and the 2nd respondent will be liable for 50% of the award amount along with interest. The claimants will be entitled for their share in tune with the apportionment made by the Tribunal.

The appeal is allowed as above. No costs.

Sd/-

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

Sd/-

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

AL/-

True copy

P.A to Judge

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:5:

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

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

AL/-