

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

MACA.No. 3238 of 2009 ()

AGAINST THE AWARD IN OPMV 2547/2004 of M.A.C.T., ERNAKULAM
DATED 10-10-2008

APPELLANT(S)/PETITIONERS:

1. MARY P.M. @ MARY PIGARUS,
AGED 74 YEARS, WIFE OF LATE SRI. ANGELUS ASSUEZ
2. ROSEBELL JOSHY, AGED 48 YEARS,
DAUGHTER OF LATE SRI. ANGELUS ASSUEZ
3. HERBERT ASSUEZ, AGED 47 YEARS,
SON OF LATE SRI. ANGELUS ASSUEZ
4. ANITHA BIJU, AGED 40 YEARS,
DAUGHTER OF LATE SRI. ANGELUS ASSUEZ
5. CLINT LOPEZ, AGED 18 YEARS,
SON OF LATE ALBERT LOPEZ
ALL APPELLANTS ARE RESIDING AT THOTTIPARAMBIL, HOUSE
MYTHRI LANE, KALOOR P.O., ELAMKULAM
VILLAGE, KANAYANNUR TALUK, ERNAKULAM DISTRICT.

BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.ANILA PETER

RESPONDENT(S)/RESPONDENTS:

1. M.ARUMUGHAM, S/O LATE MARUTHAM CHETTIAR,
KRISHNA TAILORS, VI/161, VELANTHAVALAM P.O.
PALAKKAD 678557.
2. P.SARAVANAKUMAR, S/O PANEERSELVAM,
NEAR MILMA COMPANY, NAYKARPADY KARA, MANNARKADU TALUK
PALAKKAD DISTRICT.
3. THE UNITED INDIA INSURANCE COMPANY
LIMITED, DIVISIONAL OFFICE, ERNAKULAM
COCHIN-682016.

R,R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R,R3 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.3238 of 2009

Dated this the 6th day of July, 2015

JUDGMENT

Jyothindranath, J.

This is an appeal filed by the claimants in O.P.(MV) No.2547/2004 on the file of the Motor Accidents Claims Tribunal, Ernakulam. The challenge is against the quantum assessed by the Tribunal. The facts of the case in a nutshell, is as follows:

2. The deceased is a person aged 74 years, who is a retired Headmaster of a private aided school. On 8.9.2004 at about 9.40 p.m. while the deceased was crossing Edappally Bypass road, a lorry came and knocked him down and as such he sustained fatal injuries and on the way to the hospital, he succumbed to the injuries. Alleging negligence on the side of the driver of the lorry as the cause of the accident, the above said claim petition was moved for a total sum of Rs.5 Lakhs as compensation.

2. The Tribunal, after appreciating the materials before it, awarded a total sum of Rs.72,500/-. When the appeal came up for hearing, learned counsel appearing for the appellants argued before us that the Tribunal has not considered the fact that the deceased was a pensioner. He was getting a sum of Rs.10,200/- as monthly pension. To show the same, Ext.A5 pension book of the first appellant, who is none other than the wife of the deceased, was produced. As per the Government Orders, it can be seen that the wife will be entitled for 50% of the pension as family pension. It is the submission before us that even though the actual pension was discernible from the pension book of the first appellant, the Tribunal discarded the same and only took a notional income at Rs.15,000/- per annum. It is the further submission that the multiplier available will be 5 and the compensation awarded on various heads like pain and suffering, loss of estate, loss of love and affection, etc. are also inadequate.

3. Learned Senior Counsel for the insurance company submitted before us that the deceased was aged 74 years. It is also the submission that in this case, except appellant No.1, all others cannot be said as

dependents of the aged person. When there is no positive evidence regarding the actual pension received by the deceased, the Tribunal correctly adopted the income at Rs.15,000/- as his annual income. It is also the submission before us that considering all the relevant materials before the Tribunal, a total sum of Rs.72,500/- was awarded and any interference by this Court in this regard is not warranted.

4. This is a case where a pensioner died in a motor vehicle accident. Even though the first appellant is entitled for family pension, that aspect cannot be considered while the liability of the tortfeasor is assessed. After appreciating the materials before this Court, we feel that this is a case where refixation of compensation is warranted. While the just compensation is assessed, the relevant factors like the age of the deceased, the relationship with the claimants, the age of the first appellant, etc. are to be considered.

Thus, the total compensation is refixed in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Loss of dependency	50000	408000 (10200 x 12 x 5 x $\frac{3}{4}$)
Funeral expenses	3000	10000
Transport to hospital	2000	2000

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Pain and suffering	7500	7500
Loss of companionship	5000	15000
Loss of estate	5000	20000
Total		462500

(Rupees Four lakhs sixty-two thousand and five hundred only)

The enhanced compensation will carry interest at 9% per annum from the date of petition and the enhanced compensation also will be divided among the sharers in the ratio as ordered by the Tribunal. It is further made clear that the insurance company shall deposit the entire amount of compensation, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment and on deposit of the said amount with interest, the parties are entitled for the release of the amount.

The appeal is allowed as above. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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