

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 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

MACA.No. 2091 of 2008 ()

AGAINST THE AWARD IN OPMV 819/2005 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, PERUMBAVOOR DATED 11-10-2007

APPELLANTS/PETITIONERS IN OP (MV):

1. SUDHA, AGED 38 YEARS, W/O.VELAYUDHAN,
AYATHUPARAMBIL HOUSE, CHALACKAL, MARAMPILLY P.O.

2. NIMISHA, AGED 17 YEARS, D/O.VELAYUDHAN,
-DO- -DO- -DO-, MINOR PERSON
REPRESENTED BY HER MOTHER, SUDHA, -DO- -DO-

3. BHARATHI, AGED 63 YEARS,
W/O.MOOTHAKURUMBAN, AYATHUPARAMBIL HOUSE, CHALACKAL
MARAMPILLY P.O.

4. MOOTHAKURUMBAN, AGED 68 YEARS,
S/O.AYYAPPAN, -DO- -DO- -DO-

BY ADV. SRI.T.K.SAJEEV

RESPONDENTS/RESPONDENTS IN OP (MV):

1. PAREED T.K., S/O.KOCHUNNY, THOTTATHIL
HOUSE, PALLIPPURAM KARA, MANJAPETTY
ERNAKULAM DISTRICT.

2. HYDROSE T.P., THOTTATHIL HOUSE,
MARAMPILLY P.O., MANJAPETTY, ERNAKULAM DISTRICT.

3. THE NEW INDIA ASSURANCE CO.LTD.
ST.JOSEPH'S BUILDING, A.M.ROAD, PERUMBAVOOR.

R,R3 BY ADV. SRI.JOY GEORGE

R,R3 BY ADV. SMT.PRAICY JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.2091 of 2008

Dated this the 5th day of February 2015

JUDGMENT

Ramachandran Nair , J.,

The first appellant's husband died in an accident which occurred on 13.4.2005. The total compensation awarded by the Tribunal is Rs.3,00,870/- with 7% interest which is under challenge here.

2. The deceased was riding his bicycle from Marampilly to his home at Chalakal and then a tipper lorry bearing registration No. KEF-7257 hit him and even though, he was undergoing treatment at Medical Trust Hospital, Ernakulam, he succumbed to the injuries.

3. The deceased was a coolie worker and the monthly income was claimed at the rate of Rs.4,500/- per month. But the Tribunal adopted the method of compensation by taking notional income of Rs.2,000/- per month, which the learned counsel for the appellant submitted that it is not justified. The accident is of

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the year 2005 and therefore, we are also of the view that Rs. 4,500/- per month for a coolie is reasonable. He died due to head injury sustained in the accident.

4. The multiplier, going by the decision reported in ***Sarla Verma Vs. Delhi Transport Corporation [2010 (2) KLT 802]*** is 15 and the claimants being four in number, $1/4^{\text{th}}$ will have to be deducted towards personal expenses and thus the dependency compensation will be Rs. 6,07500/-. The deceased has sustained very serious injuries including head injury and even though he died on the same day we grant an amount of Rs. 10,000/- towards pain and suffering. The claimants will be entitled to enhancement of compensation towards loss of consortium, loss of love and affection, funeral expenses and loss of estate in the light of the various decisions of the Apex Court including the decision reported in *Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC)*. Accordingly, we grant Rs. 1 lakh towards loss of consortium, Rs. 1 lakh towards loss of love and affection, Rs. 25,000/- towards funeral expenses, and Rs. 15,000/- towards loss of estate.

5. Accordingly, we modify the award as follows:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount Awarded</i>	<i>Amount modified</i>
1	Loss of dependency	256320	607500
2	Transportation expenses	2500	2500
3	Damage to clothing	250	250
4	Pain and suffering	5000	10000
5	Loss of love and affection	15000	100000
6	Loss of consortium	15000	100000
7	Loss of estate	2500	15000
8	Funeral expenses	3000	25000
9	Treatment expenses	1300	1300
	Total	3,00,870/-	861550

6. Therefore, the total compensation will be come to Rs. 8,61,550/- which will carry interest at the rate of 9% p.a from the date of petition for the enhanced compensation in view of the decision reported in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513],. The Insurance company is directed to deposit the amount less the

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amount already deposited within a period of three months. The amount will be shared in the ratio fixed by the Tribunal by the appellants. Court fee required for the amount awarded will be realised by the Tribunal before disbursing the amount.

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