

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

MACA.No. 2092 of 2008 ()

AGAINST THE AWARD IN OPMV 1809/2002 of M.A.C.T., PERUMBAVOOR DATED
19-11-2007

APPELLANTS/PETITIONERS IN OP (MV) :

1. MARY.T.T., AGED 47 YEARS,
W/O.THANKACHAN @ POULOSE, THAIPPARAMBIL HOUSE
KARUKUTTY P.O., KARUKUTTY, ALUVA TALUK.
2. RICHA, AGED 15 YEARS, D/O.THANKACHAN,
@ POULOSE, THAIPPARAMBIL HOUSE, KARUKUTTY P.O.
KARUKUTTY, MINOR GIRL, REPRESENTED BY HER
MOTHER, MARY T.T., -DO- -DO- -DO-
3. DONA, AGED 10 YEARS, D/O.THANKACHAN,
@ POULOSE, THAIPPARAMBIL HOUSE, KARUKUTTY P.O.
KARUKUTTY, MINOR GIRL, REPRESENTED BY HER MOTHER
MARY T.T., -DO- -DO- -DO-
4. ROSY, AGED 72 YEARS, W/O.RAFEL,
-DO- -DO- -DO-

ADDITIONAL APPELLANTS (LRs OF FOURTH APPELLANT)

5. AUGUSTIN, AGED 54 YEARS, S/O.RAFEL,
-DO- -DO- -DO-
6. POLY, AGED 52 YEARS, S/O.RAFEL,
-DO- -DO- -DO-
7. BABU, AGED 47 YEARS, S/O.RAFEL,
-DO- -DO- -DO-
8. JOHNSON, AGED 44 YEARS, S/O.RAFEL,
-DO- -DO- -DO-
9. THOMAS, AGED 42 YEARS, S/O.RAFEL,
-DO- -DO- -DO-

10. SABU, AGED 40 YEARS, S/O.RAFEL,
-DO- -DO- -DO-

11. MELBIN, AGED 38 YEARS, D/O.RAFEL,
-DO- -DO- -DO-

BY ADV. SRI.T.K.SAJEEV

RESPONDENTS/RESPONDENTS IN OP (MV) :

1. JOSEPH K.A., S/O.ANTONY, KORUKUZHIYIL
HOUSE, MYLANKARA DESOM, MOOTHAKUNNAM VILLAGE
ERNAKULAM DISTRICT.

2. ANWAR K.M., S/O.MOHAMMED ALI,
KURIKKAL HOUSE, MATHILAKAM P.O, S.N.PURAM
KODUNGALLUR.

3. THE NATIONAL INSURANCE CO.LTD.,
P.B.NO.25, MUNICIPAL SHOPPING COMPLEX, NORTH PARUR
683 513.

4. UNITED INDIA INSURANCE CO.LTD.,
MUNICIPAL BUILDING, NORTH PARUR.

R3 BY ADV. SRI.JOE KALLIATH

R4 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

MACA No.2092 OF 2008

Dated this the 18th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

Inadequacy of the compensation awarded by the Tribunal is under challenge in this appeal. The petitioners before the Tribunal are the widow and two children as well as the parents of the deceased. The father is no more, after the award is passed and his legal heirs are also impleaded in the appeal.

2. The accident occurred on 23.8.2002 while the deceased was travelling in a tempo van bearing Reg.No. KL 7/X 4032 from Kochery to Varapuzha through the Kodungallur-Guruvayur NH, the offending vehicle, a Ashok Leyland bus bearing Reg.No.KL-7/X 8811 dashed against the tempo van and the deceased sustained serious injuries. Some of the passengers in the bus were also injured. The deceased succumbed to the injuries on the same day.

3. The learned counsel for the appellants submits that even

though the monthly income claimed was @ Rs.4,500/-, the Tribunal fixed the monthly income only at Rs.2,500/- which is totally inadequate. Ext.A8 is the copy of the driving licence of the deceased.

4. We notice that the deceased was driving the vehicle at the time of the accident. Therefore, there cannot be any dispute regarding his occupation. Since the accident is of the year 2002, we fix an amount of Rs.4,000/- as the monthly income for the purpose of assessing compensation. The multiplier in the age group of 40-45 is 14 going by the judgment in **Sarla Verma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**. $\frac{1}{4}$ of the amount will have to be deducted for personal expenses.

5. The Tribunal has granted compensation under different heads as evident from the table below :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	300600
Transportation expenses	2500
Pain and suffering	5000
Loss of love and affection	15000
Loss of consortium	15000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Funeral expenses	3000
Total	341100

6. It is submitted that for loss of love and affection, loss of consortium as well as for funeral expenses and towards pain suffering, the appellants are entitled for enhancement.

7. We heard the learned counsel for the Insurance Company also. Even though notice has been served on respondents 1 and 2, there is no appearance.

8. After considering various aspects including the monthly income fixed by this Court, we recompute the compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	504000 (4000 x 12 x 14 x $\frac{3}{4}$)
Transportation expenses	2500
Pain and suffering	10000
Loss of love and affection	100000
Loss of consortium	100000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Funeral expenses	25000
Loss of estate	30000
Total	771500 (Rupees seven lakhs seventy one thousand five hundred only)

9. The appellants will be entitled to interest @ 9% per annum for the enhanced compensation. Going by the award, 10% of the compensation was given to the parents and the remaining 90% to the widow and the children. Since the father is no more, we direct that 10% of the enhanced compensation will be ear-marked to the mother Smt.Rosy. The remaining amount will be disbursed to appellants 1 to 3. They will share the amount equally. Since right of recovery has been allowed in favour of the Insurance Company, the same will be retained and the Insurance Company will pay the amount within a period of three months and will be entitled to recover it from the other respondents. The amount required for payment of court fee additionally will be recovered from the amount deposited by the

Insurance Company.

The appeal is accordingly allowed. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.