IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

MACA.No. 2602 of 2008 ( )

AGAINST THE AWARD IN OPMV 260/2005 of M.A.C.T.,KOTTAYAM DATED 28-03-2008

APPELLANTS/PETITIONERS:
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1. MARY.V.J.@ MRS.MARY JOHNY,
   W/O LATE JOHNY JOSEPH.

2. PRATHEESH JOHNY, S/O.LATE JOHNY JOSEPH

3. NITHEESH JOHNY,S/O.LATE JOHNY JOSEPH

4. MRS.ANNAMMA JOSEPH, W/O.LATE JOSEPH,

ALL ARE RESIDING AT KURICHIYANIYIL HOUSE, VETTIMUKAL
ETTUMANOOR P.O.KOTTAYAM DISTRICT.

BY SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.P.S.APPU

RESPONDENTS/RESPONDENTS:
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1. SUNNY ABRAHAM, RESIDING AT
THOTTICHIRAYIL HOUSE, PRIYADARSINI, VAIKOM P.O.

2. SIBY, S/O.ANTHRAYOSE, RESIDING AT
VALLOOR HOUSE, KALIKAVU, KURUVILANGADU P.O.
NOW RESIDING AT VADAKKEKALAYIL HOUSE
NEAR MANNAR JUNCTION, MANNAR P.O.KADUTHURUTHY.
(DELETED)

3. THE NEW INDIA ASSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE, COLLECTORATE P.O.KOTTAYAM.

* RESPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED 5.3.2015 IN I.A.NO.690/2015

R3 BY ADV. SMT.RAJI T.BHASKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.2602 OF 2008

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Dated this the 28th day of May, 2015

JUDGMENT

Ramachandran Nair, J.

The widow, two children and the mother of the deceased Johny Joseph are the appellants herein. Late Sri.Johny Joseph died in an accident which took place on 29.12.2004 at about 10.30 a.m. While he was riding his motor cycle bearing Reg.No.KL 5Q/3608 towards Vaikom, the offending vehicle, a bus bearing Reg.No.KL 5Q/4099 knocked him down. Even though he was rushed to the Medical College Hosptial, Kottayam, he succumbed to the injuries. He was working as Selection Grade Lecturer in Kuriakose Elias College, Mannanam and it was claimed that he was drawing a monthly income of ₹ 25,049/-. A total amount of ₹35 lakhs was claimed, out of which ₹ 14,26,000/- has been granted by the Tribunal. We are only on the question of adequacy of compensation and the method adopted by the Tribunal also in fixing the compensation.

2. Ext.A6 series are the salary certificates produced by the appellants. Going by the salary certificates, in December 2004, he was getting a net salary of ₹ 21,307/- as against the gross salary of ₹23,257/-. Evidence was also adduced to show that if he would have been alive, by December 2007, his salary would have been ₹32,955/-. He was due to retire on 31.05.2014. The claimants also produced Ext.A7 series which are copies of Saral forms regarding remittance of income tax for a period of five years commencing from assessment year 2000-01 to 2004-2005. Ext.A15 series are copies of orders granting DA and Ext.A16 and A17 are copies of UGC pay revision orders. Finally the Tribunal arrived at the annual income after payment of income tax as ₹ 2 lakhs. But we notice that no addition has been made towards future prospects of the deceased. Going by the judgment in **Sarla Varma v. Delhi Transport Corporation (2010(2) KLT 802 (SC),** in case of permanent employees between the age group of 40 to 50, 30% addition will have to be made. Therefore, his annual income for the purpose of calculating the compensation will be ₹ 2,60,000/- .

3. The learned counsel for the Insurance Company submits that a split multiplier may have to be taken which is opposed by the

learned counsel for the appellant. The multiplier going by the judgment in Sarla Varma's case (cited supra), will be 14 for the age group of 40 to 45, which is applicable in this case.

4. As far as the aspect whether split multiplier can be taken or not, it has been explained by the Apex Court in **Puttamma v. Narayana Reddy (2014 (1) KLT 738)** that in exceptional circumstances, the same can be adopted by the court. The said aspect has been considered by this Court in a recent judgment reported in Valsa v. Ulahannan (2015(1)KHC 729) and by relying upon paragraph 45 of the judgment of Sarla Varma's case (cited supra), the view taken is that while balancing the assessment of compensation, both positive and negative aspects will have to be considered. Therefore, the retirement age being certain, we will be justified in adopting the following method for assessing the compensation :

5. After deducting ¼ for personal expenses of the deceased for a period of 11 years, the amount will be ₹21,45,000/- (1,95,000 x 11) (The retirement age, then, was 56). Going by the service conditions of staff in the State, 50% of the net salary can be taken as pensionable income and for the remaining three years, the contribution

will be ₹ 3,90,000/- (1,30,000/- x 3), making a total of ₹ 25,35,000/-. If it is divided by 14, the actual multiplier, the multiplicand will be ₹ 1,81,071/- per year. Therefore, the total dependency compensation will be ₹25,35,000/-.

6. For pain and suffering ₹ 10,000/- has been awarded by the Tribunal, which we confirm. But the amounts awarded towards loss of consortium, loss of love and affection and funeral expenses are not in tune with the decision of the Apex Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)**. Therefore, it requires modification. Towards loss of estate, no amount has been granted by the Tribunal, which has also to be reckoned. In this context, the learned counsel for the Insurance Company points out that an amount of ₹ 50,000/- has been granted for loss of service of the deceased to the petitioner No.3 before the Tribunal, a handicapped child. We are of the view that since for loss of love and affection due amounts are being granted, the same can be adjusted as against the said head.

7. Accordingly, we refix the compensation as follows :

Head of claim	***Amount in rupees***
Loss of dependency	2535000

Head of claim	*Amount in rupees*
Loss of consortium	100000
Loss of love and affection	150000
Funeral expenses	25000
Loss of estate	100000
Transportation	2000
Damage to clothing	1000
Pain and suffering	10000
Total	2923000 (Rupees twenty nine lakhs twenty three thousand only)

8. The enhanced compensation will carry interest @ 9% per annum from the date of petition. We award an amount of ₹1,00,000/- out of the total enhanced compensation to appellant No.4, the mother of the deceased and the remaining amount will be shared equally by appellants 1 to 3. The Insurance Company will deposit the amount within three months.

The appeal is accordingly allowed. No order as to costs.

T.R.RAMACHANDRAN NAIR, JUDGE

sv **K.P.JYOTHINDRANATH,JUDGE**