

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

FRIDAY, THE 29<sup>TH</sup> DAY OF OCTOBER 2021 / 7TH KARTHIKA, 1943

MACA NO. 1528 OF 2012

AGAINST THE AWARD IN OPMV 1884/2010 OF PRINCIPAL MOTOR ACCIDENT

CLAIMS TRIBUNAL, KOZHIKODE

**APPELLANTS/PETITIONERS:**

1 N.M. VASANTHA  
NADAMMAL MEETHAL HOUSE, PIPELINE ROAD,  
KUTHIRAVATTOM P.O, KOZHIKODE.

2 N.M.PRADEESH  
NADAMMAL MEETHAL HOUSE, PIPELINE ROAD,  
KUTHIRAVATTOM P.O, KOZHIKODE.

3 N.M.PRAJEENA  
NADAMMAL MEETHAL HOUSE, PIPELINE ROAD,  
KUTHIRAVATTOM P.O, KOZHIKODE.

BY ADV SRI.JACOB ABRAHAM

**RESPONDENTS/RESPONDENTS:**

1 SUNIL KUMAR  
5/3167, PEEDIKATHODI HOUSE,  
P.O HEAD POST OFFICE, KOZHIKODE 673 001.

2 THE NATIONAL INSURANCE CO.  
HERO HONDA VERTICAL 101 106, BMC HOUSE, CONNAUGHT  
PLACE, NEW DELHI 110 001.

R2 BY ADV SRI.ABHIJETT LESSLI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY  
HEARD ON 15.09.2021, THE COURT ON 29.10.2021 DELIVERED THE  
FOLLOWING:

**T.R. RAVI, J.**

**M.A.C.A. No.1528 of 2012**

**Dated this the 29<sup>th</sup> day of October, 2021**

**JUDGMENT**

The appellants are the widow and children of one Sivadasan, who died on 10.07.2010 due to an accident which happened on 08.07.2010. The appellants preferred a claim for compensation before the Tribunal and the Tribunal awarded a sum of ₹1,59,000/- with interest at the rate of 7% per annum. Aggrieved by the award, the appellants have preferred this appeal seeking enhancement of the compensation.

2. Heard both sides.
3. According to the appellants, the deceased was working as a coconut plucker and was earning about ₹10,000/- per month as wages. He was aged 58 years at the time of the accident. The counsel for the appellants submits that the Tribunal went wrong in fixing the notional income of the deceased at ₹2,000/- per month and in applying the multiplier of '8' instead of '9', as held in **Sarla Verma vs Delhi Transport Corporation and others [2010 (2) KLT 802]**. It is submitted that going by the decision in **Ramachandrappa v.**

**Manager, Royal Sundaram Alliance Insurance Co.Ltd.**, reported in [**AIR 2011 SC 2951**], the notional income in the year 2010 ought to have been ₹7,500/- per month. It was further contended that instead of granting ₹15,000/- each under the heads funeral expenses and loss of estate, the Tribunal has granted only ₹3,000/- and ₹5,000/- respectively and the same should be enhanced. It is also submitted that the Tribunal has awarded a sum of ₹5,000/- each under the heads loss of companionship and loss of love and affection, while the appellants together are entitled to a sum of ₹ 1,20,000 towards loss of consortium. I find considerable merit in the submissions made by the counsel for the appellant. I am of the opinion that the award passed by the Tribunal has to be modified and the compensation is to be enhanced.

4. Applying a notional income of ₹7,500/- per month and the multiplier of '9', the compensation payable under the head loss of dependency would come to ₹5,40,000/- ( $7500 \times 12 \times 9 \times 2/3$ ). After deducting the sum of ₹1,28,000/- granted by the Tribunal, the appellants will be entitled to a sum of **₹4,12,000/-** under the head loss of dependency. A sum of **₹1,10,000/-** has to be awarded as additional compensation towards loss of consortium. A sum of **₹10,000/-** is to be awarded as additional compensation towards loss

of estate and a sum of **₹12,000/-** is to be awarded as additional compensation towards funeral expenses. The Tribunal has awarded a sum of ₹10,000/- towards pain and suffering. Going by the decision in

**United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur & Ors.** reported in **[2020 (3) KHC 760]**, the legal representatives are not entitled for compensation under the head pain and suffering. The said amount has to be deducted.

5. In the result, the appeal is allowed and the appellants are awarded an enhanced compensation of **₹5,34,000/- (Rupees Five Lakhs Thirty Four Thousand only)** with interest at the rate of 9% per annum from the date of filing of the claim petition (22.12.2010) till the date of realisation, with proportionate costs. The appeal was filed with a delay of 107 days. By order dated 02.08.2012, this Court condoned the delay in filing the appeal on condition that the appellants will not be entitled to interest on the enhanced compensation which may be awarded by this Court for the period of 107 days. The interest payable on the enhanced compensation shall be hence excluding the period of 107 days. The 2<sup>nd</sup> respondent insurer shall deposit the additional compensation granted in this appeal along with the interest and proportionate costs, before the Tribunal within two months from the date of receipt of a certified copy of this

judgment, after deducting any amount to which the appellants are liable towards balance court fee and legal benefit fund. The disbursement of the compensation to the appellants shall be in accordance with law.

Sd/-  
**T.R. RAVI**  
**JUDGE**

dsn