

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

MACA.No. 177 of 2012 ()

AGAINST THE AWARD IN OPMV 434/2010 of M.A.C.T.,KOZHIKODE
DATED 24-03-2011

APPELLANT(S)/PETITIONERS:

1. PUSHPALATHA
W/O.LATE JAYAKUMAR KANDACHAN, EDAKKANDIYIL HOUSE
MOORIKKARA, KAKKODI, MAKKADA DESOM
KOZHIKODE 673611.

2. AMARDEV,
S/O.LATE JAYAKUMAR, AGED 6 YEARS (MINOR), KANDACHAN
EDAKKANDIYIL HOUSE, MOORIKKARA, KAKKODI
MAKKADA DESOM, KOZHIKODE 673611
REPRESENTED BY GUARDIAN MOTHER SMT PUSHPALATHA
1ST PETITIONER.

BY ADVS.SRI.C.ANIL KUMAR
SMT.SHAHNA KARTHIKEYAN

RESPONDENT(S):RESPONDENTS

1. ZAINUDDIN T.M.
S/O. RAZAK, THEKKETHAYYIL THAZAM HOUSE, N.V.ROAD
MOORIKKARA P.O. KAKKODI, KOZHIKODE 673611.

2. BHARGHAVI,
D/O. RAMU, KACHATTIMMAL HOUSE
MAKKADA P.O, KAKKODI - 673617.

3. THE RELIANCE GENERAL INSURANCE CO.LTD
2ND FLOOR, CITADEL ARCADE, OPP.TAGORE CENTRINARY HALL
R.C.ROAD, KOZHIKODE 673032.

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.177 of 2012

Dated this the 30th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimants before the Tribunal. The claimants are the widow and minor son of the deceased late Shri Jayakumar. The accident occurred on 17.08.08 at a place called Thaneerpanthal. It appears that he was going to his brother's tailoring shop on a bicycle and when he reached near a vegetable shop, one bus bearing Reg.No.KL 11 Q 7569 which was being driven by the 1st respondent in a rash and negligent manner came through the wrong side of the road and hit the deceased. He was treated in the Medical College Hospital and later succumbed to the injuries on 14.08.2008.

2. Before us the sole issue raised is regarding the quantum of compensation arrived at by the Tribunal. According to the learned counsel for the appellants, the deceased was a Painter by profession and was earning a monthly income of Rs.8,000/-. It is submitted that the evidence of the co-worker was also there, but the Tribunal has fixed it only at Rs.3,000/-. It

is also submitted that the compensation awarded by the Tribunal for funeral expenses (Rs.5000/-), loss of estate (Rs.5,000/-), pain and suffering (Rs.10,000/-), loss of love and affection (Rs.10,000/-) and loss of consortium (Rs.10,000/-) is too low in the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh** [2013(3) KLT 89(SC)] followed by other judgments.

3. The learned Senior Counsel for the Insurance Company submitted that the Tribunal fixed the amount of monthly income after rejecting the evidence adduced by the appellants.

4. The fact that the deceased was a Painter by profession will show that it is a skilled job. Of course the claim is that he was earning Rs.300/- per day, but it cannot be accepted that as a Painter he will get work continuously, ie.30 days, in a month. Hence we will have to take a reasonable income in order to calculate the compensation. The accident occurred in the year 2008 and as per the wage structure prevailing at that time, we take Rs.5,000/- as the income of the deceased.

5. The claimants are the widow and minor son of the deceased. Therefore $\frac{1}{3}^{\text{rd}}$ of his income will have to be deducted towards personal expenses. He was aged 48 years at the time of

the accident and hence the multiplier will be 13. Therefore the dependency compensation will come to Rs.5,20,000/- (Rs.5000X12X13X2/3).

6. Accordingly the compensation is recomputed as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Transport to hospital	Rs. 500.00
2	Bystander's expenses(Rs.250X8)	Rs. 2,000.00
3	Extra nourishment	Rs. 1,500.00
4	Funeral expenses	Rs. 25,000.00
5	Loss of estate	Rs. 35,000.00
6	Pain and suffering	Rs. 20,000.00
7	Loss of love and affection	Rs. 1,00,000.00
8	Treatment expenses	Rs. 2,410.00
9	Loss of consortium	Rs. 1,00,000.00
10	Loss of dependency	Rs. 5,20,000.00
	TOTAL	Rs. 8,06,410.00 round off to Rs. 8,06,400.00

(Rupees Eight lakhs six thousand and four hundred only)

Accordingly the appellants are entitled to a total compensation of Rs.8,06,400/- (Rupees Eight lakhs six thousand and four hundred only) and the enhanced amount will carry interest @9% per

annum from the date of petition. There will be a direction to the Insurance Company to deposit the amount (less the amount if any already paid) within three months from the date of receipt of a copy of this judgment and on such deposit being made, the claimants can withdraw the amount. The appellants are also directed to pay the balance court fee in tune with the total compensation arrived at by this Court.

The appeal is allowed accordingly. The parties will bear their respective costs in this appeal.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge