

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 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

MACA.No. 280 of 2012 ()

AGAINST THE AWARD IN OPMV 236/2009 of M.A.C.T.,KOZHIKODE DATED 11-03-2010

APPELLANT(S)/PETITIONERS::

1. ABDUL SAMAD.A.
SON OF DEREESI, ASARITHODI HOUSE, PERUMTHODI PADAM
PULLIPARAMBA POST, VIA CHELEMBRA
MALAPPURAM DISTRICT-673 634.

2. RAMLA. A.
WIFE OF ABDUL SAMAD.A, ASARITHODI HOUSE
PERUMTHODI PADAM, PULLIPARAMBA POST, VIA CHELEMBRA
MALAPPURAM DISTRICT-673 634.

3. AYISHA MUMTHAS AGED 17 YEARS
DAUGHTER OF ABDUL SAMAD. A.
REPRESENTED BY THE FATHER, ASARITHODI HOUSE
PERUMTHODI PADAM, PULLIPARAMBA POST, VIA CHELEMBRA
MALAPPURAM DISTRICT-673 634.

4. SHAHANAS, AGED 16 YEARS
DAUGHTER OF ABDUL SAMAD A.
REPRESENTED BY THE FATHER, ASARITHODI HOUSE
PERUMTHODI PADAM, PULLIPARAMBA POST, VIA CHELEMBRA
MALAPPURAM DISTRICT-673 634.

5. RINAS A. AGED 8 YEARS
S/O OF ABDUL SAMAD A., REPRESENTED BY THE FATHER
ASARITHODI HOUSE, PERUMTHODI PADAM, PULLIPARAMBA POST
VIA CHELEMBRA, MALAPPURAM DISTRICT-673 634.

6. FAYAS DHARIVS A. AGED 4 YEARS
S/O ABDUL SAMAD A., REPRESENTED BY THE FATHER
ASARITHODI HOUSE, PERUMTHODI PADAM, PULLIPARAMBA POST
VIA CHELEMBRA, MALAPPURAM DISTRICT-673 634.

BY ADV. SRI. JACOB ABRAHAM

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:

1. LUCKA DEVASIA
S/O LUCKA, MATTAPPALLY HOUSE, T.V. PURAM P.O.

VAIKOM, KOTTAYAM DISTRICT-686141.

2. ANEESH B.
S/O KEERAN, MUKKAMMAL HOUSE, MAMPURAM POST
THIRURANGADI, MALAPPURAM DISTRICT.673 634.

3. ICICI LOMBARD GENERAL INSURANCE CO LTD,
ROOM NO. 1, 4TH FLOOR, MUTHOOT CROWN PLAZA
KOTTAYAM-686 001.

R3 BY ADV. SRI.K.B.RAMANAND
R3 BY ADV. SRI.R.AJITH KUMAR VARMA (128/84)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.280 of 2012

Dated this the 11th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The death caused to the son of appellants 1 and 2, late Shri Riyaz, aged 19 years, led to the present dispute between the parties. He died in a motor vehicle accident which occurred on 19.10.2007 at about 6.45 p.m. The accident spot is in front of Shivamani Service Station on the side of Ramanattukara-Perumthodi road. He was riding his motor cycle bearing Reg. No.KL-55-A-6935 and the offending vehicle, a bus having Reg. No.KL-5-R 509 hit against him. He was admitted in the Medical College Hospital, Kozhikode with severe injuries and subsequently he died on the same day. The Tribunal awarded a sum of Rs.1,74,000/- as total compensation as against the claim of Rs.4 Lakhs.

2. Heard learned counsel on both sides.

3. Learned counsel for the appellants submitted that the deceased

was a student studying for II year B.A. But on the ground that he is a non earning member, the Tribunal arrived at a notional income of Rs.15,000/- annually and adopted the multiplier of 15. It is submitted that the multiplier adopted is not correct since the proper multiplier will be 18 and a much higher amount ought to have been granted for loss of dependency. It is further submitted that for funeral expenses, only a sum of Rs.3,000/- was awarded and for loss of love affection, only Rs.10,000/- was granted.

4. Learned counsel for the insurance company submitted that since the deceased was a bachelor, even though he was aged only 19, 50% will have to be deducted for personal expenses, going by the principles stated in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC).

5. As far as the quantification of the compensation where students are involved, it will have to be assessed by fixing a notional income. Herein also, the deceased was not working. About the future prospects of the deceased, the learned counsel for the appellants submitted that the deceased had only one year to complete B.A. which

factor should have been reckoned by the Tribunal. According to the learned counsel for the insurance company, no further evidence has been adduced to show the background of the parents, the employment opportunities and other factors.

6. As far as the assessment of compensation is concerned, since the deceased was a non earning member, we will have to fix a notional income for calculating loss of dependency. The Tribunal arrived at only Rs.15,000/- annually. According to us, a reasonable amount ought to have been awarded and therefore, we are of the view that an amount of Rs.30,000/- annually will be a just and fair amount. Therefore, the compensation for loss of dependency will come to Rs.2,70,000/- ($\text{Rs.30000/-} \times 18 \times 50/100$). Towards loss of love and affection, we grant an amount of Rs.1 lakh and towards funeral expenses, an amount of Rs.25,000/- is granted. Similarly, for loss of estate we grant an amount of Rs.10000/-.

Accordingly, the award passed by the Tribunal is modified as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court</i>
Transport to hospital	500	500
Damage to clothing	500	500
Pain and suffering	10000	10000
Funeral expenses	3000	25000
Loss of love and affection	10000	100000
Loss of estate		10000
Loss of dependency	150000	270000
Total		416000

(Rupees Four lakhs and sixteen thousand only)

The enhanced amount will carry interest at the rate of 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months and once the amount is deposited, we allow the claimants to withdraw the amount as per the directions already issued by the Tribunal.

The appeal is allowed as above. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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