

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

MACA.No. 890 of 2012 ()

AGAINST THE AWARD IN OPMV 1104/2010 of M.A.C.T.,KOZHIKODE DATED 13-10-2011

APPELLANT(S)/PETITIONERS:

1. P.T. MUHAMMED ALI
RESIDING AT 12/338A, ARSH OJINTAKAM, SOUTH BEACH ROAD
KOZHIKODE-673 001.

2. O.AYISHABI
RESIDING AT 12/338A, ARSH OJINTAKAM, SOUTH BEACH ROAD
KOZHIKODE-673 001.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENT(S):RESPONDENTS

1. K.C. GIRISHA
454, BEHIND TAPCMS, NANJANGUD TOWN
(PO) MYSORE, MYSORE DISTRICT, KARNATAKA-570 001.

2. M.LOKESH
NO.23, MAUDI MOHALLA, HIRKAAL
(PO) MYSORE-570 001.

3. M/S.SRIRAM GENERAL INSURANCE CO.
HEAD OFFICE, E-8, RICCO INDUSTRIAL AREA
SITAPURA, JAIPUR, RAJASTAN-302022.

R3 BY ADV. SRI.MATHEWS JACOB (SR.)

R3 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.890 of 2012

Dated this the 24th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants before this Court are challenging the inadequacy of compensation awarded consequent on the death of their son Shri Mohammed Shiyas. He was aged 20 years at the time of death and was a student of the University School of Design (University of Mysore), for II year of B.Arch.

2. The accident occurred on 1.10.2009 while he was travelling as a pillion rider in a bike bearing Reg. No.KL-13-K.7241 through Gundelpet-Mysore road. At a place called “Kadubrnakatte” a tipper lorry bearing Reg. No.MH-09-Q-5715 dashed against the bike causing the accident. He sustained very serious injuries and died on the same day.

2. The Tribunal has discussed various aspects in the award and finally granted Rs.3,65,000/- as total compensation. The income of the

deceased was calculated notionally at Rs.3,000/- per month. The compensation given under the various heads are as follows:

<i>Head of claim</i>	<i>amount awarded</i>
Transport to hospital	5000
Damage to clothing	1000
Funeral expenses	5000
Loss of estate	10000
Pain and suffering	10000
Loss of love and affection	10000
Loss of dependency	324000
Total	365000

3. Learned counsel for the appellant submitted that the notional income fixed is too low. He was a student of II year B.Arch. and was expected to complete the course within one year. He would have obtained a very good job as he was in the discipline of B.Arch. It is therefore submitted, by relying upon the judgment of the Apex Court in **Arvind Kumar Mishra v. New India Assurance Company Ltd. and another** {(2010) 10 SCC 254} that the Tribunal should have considered his academic background. In the above decision, the case of an Engineering student who was in the final year at Birla Institute of Technology was considered by the Apex Court. The accident occurred

on 23.6.1993. Rupees 60,000/- annually was taken as salary and allowances which would have been received by him if he had obtained a job under Government service. He had sustained 70% permanent disability. The submission made by the learned counsel for the appellant is based on the chances of Mr. Shiyas to get employment and the handsome amount of salary.

4. Learned counsel for the insurance company submitted that being a student of II year, only a notional income can be assessed by the Tribunal and herein Rs.3,000/- is fixed which is reasonable.

5. According to us, the fact that the deceased was studying for a professional course, cannot be disputed. He had reached upto the II year of his course also. While considering the question of fixing notional income in respect of a student, various factors including future prospects will have to be considered. The employment potential of an Engineering student especially in B.Arch. discipline, will be high. Apart from that, he would have been able to earn money even in engaging himself in private practice also, if he is not employed otherwise. Therefore, all these factors are evident. It is true that he has

not obtained a degree, as he was in the IIInd year. But we will have to balance many aspects while fixing the quantum of compensation. The life of a student in a professional course was deprived by the accident.

6. In the light of these aspects, we fix an amount of Rs.6,000/- as notional monthly income which will be reasonable. As far as loss of love and affection and loss of estate are concerned, learned counsel for the appellant submitted that in the light of the judgment of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 - SC) followed by various other judgments, at least a sum of Rs.1 Lakh and Rs.25,000/- will have to be awarded and we also find it reasonable to enhance the amounts under those heads. We also enhance the compensation for funeral expenses to Rs.25,000/-.

Therefore, we recompute the total compensation in the following manner:

<i>Head of claim</i>	<i>amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Transport to hospital	5000	5000
Damage to clothing	1000	1000
Funeral expenses	5000	25000

<i>Head of claim</i>	<i>amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Loss of estate	10000	25000
Pain and suffering	10000	10000
Loss of love and affection	10000	100000
Loss of dependency	324000	648000
Total	365000	814000

(Rupees Eight lakhs and fourteen thousand only)

The enhanced amount of compensation will carry interest at 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 three months. On such deposit the appellants are permitted to withdraw the amount.

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

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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