

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

MACA.No. 1023 of 2015 ()

AGAINST THE AWARD IN OP(MV) 372/2014 OF THE PRINCIPAL M.A.C.T.,
KOZHIKODE DATED 08-12-2014

APPELLANTS:

1. LAKSHMIDAS KARAMCHAND, AGED 51 YEARS
S/O.BHAGWANDAS, AGED 51 YEARS

2. BHUWANESWARI, W/O.LAKSHMIDAS KARAMCHAND,
AGED 48 YEARS.

3. KARTHIKA,
(MINOR), D/O.LAKSHMIDAS KARAMCHAND, AGED 17 YEARS
DOB 17.04.1996, REP.BY FATHER & NEXT FRIEND LAKSHMIDAS
KARAMCHAND
ALL ARE RESIDING AT 5/2394, KIZHAKKETHARA HOUSE
P.O.KUNIYIL TEMPLE, ASOKAPURAM, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDEEN

RESPONDENT(S)/3RD RESPONDENT:

THE NEW INDIA ASSURANCE CO.LTD
DIVISIONAL OFFICE, SILVER PLAZA BUILDING, I.G.ROAD
KOZHIKODE-673 001.

R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.A.C.A. No. 1023 of 2015

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Dated, this the 9th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

Grievance of the appellants, who are the parents and sibling of the deceased student, is mainly with regard to the inadequacy of compensation of Rs. 1250104/- awarded by the Tribunal.

2. The case of the appellants is as follows :

The accident was occurred on 04.12.2013, when the deceased was traveling as pillion rider on the motor cycle along the Kozhikkode - Kannur national highway. When the motorcycle reached at the place of occurrence, it was knocked down by a stage carriage bearing No. KL 13 J 501 owned by the first respondent, driven by the second respondent and insured with the 3rd respondent. The deceased sustained grievous injuries and succumbed to the said injuries, which in turn is sought to be compensated by filing the claim petition.

3. The grievance of the claimants was that the deceased was 3rd year B.Tech student and the loss resulted because of the untimely

death has virtually pulled them to doldrums. It was accordingly that a sum of Rs.30,00,000/- was sought for as compensation. The owner and driver of the vehicle chose to remain ex parte. The respondent Insurance Company sought to contest the matter only on general grounds. Evidence adduced from the part of the appellants before the Tribunal consists of oral evidence of PW1 and Exts. A1 to A7 series. No evidence was adduced from the part of the respondents.

4. On conclusion of the Trial, the Tribunal arrived at a finding that the accident was occurred only because of the negligence on the part of the driver of the bus i.e. the second respondent. With regard to the fixation of the compensation, the Tribunal observed that the age of the deceased was 20 years and as such proper multiplier would be '18'. The version of the claimant that the deceased was a B.Tech student was accepted and observed that he was pursuing 3rd year B.Tech course at KMCT Engineering College, Mukkom. The factual position that the deceased was a student of the said college was sought to be substantiated with reference to the deposition of PW1 who was the principal of the College. Though the Principal submitted in the

cross examination that deceased secured admission in the merit quota, subsequently he corrected the same stating that the admission was secured in the management quota. However Tribunal considering the nature of professional course that was being undergone by the deceased, a notional monthly income was fixed as Rs.5000/- and 100% increase was given for future prospects. Accordingly, Rs.10000/- was taken for working out the compensation, particularly towards the loss of dependency. Considering the fact that $\frac{1}{2}$ of the said amount was to be deducted towards the personal expenses, applying the multiplier '18', the compensation under the head of loss of dependency came to be fixed as Rs.10,80,000/-, though the claim under that head was only Rs.10,00,000/-. The amounts awarded by the Tribunal under the various heads are given in a tabulated format in paragraph 14 of the Award, which is extracted below for convenience of reference :

Sl. No	The compensation claimed under different heads	Amount claimed	Amount allowed	Basis/vital details in a nutshell
1	Transport to hospital	2000	1000	
2	Damage to clothing and articles	2000	1000	
3	Funeral expenses	50000	25000	
4	Treatment expenses	50000	38104	Ext. A7 series

Sl. No	The compensation claimed under different heads	Amount claimed	Amount allowed	Basis/vital details in a nutshell
5	Loss of love and affection	200000	100000	Rs.50000/- each to parents
6	Pain and sufferings	50000	5000	
7	Loss of dependency	1000000	1080000	10000x12x18x50/100
	Total		1250104	

5. Heard the learned counsel for the appellant as well as the learned counsel for the Insurance Company.

6. It is seen that an amount of Rs.25000/- has awarded under the head of funeral expenses. Though the death was occurred on the same day, the Tribunal has awarded a sum of Rs.5000/- towards the pain and sufferings on a notional basis. The transportation charges of Rs. 1000/-, damages to the clothing and other articles of Rs.1000/- and treatment expenses to the tune of Rs.40,104/- are also seen awarded by the Tribunal. That apart a sum of Rs.1,00,000/- has been awarded by the Tribunal towards the loss of love and affection.

6. After hearing both the sides, this Court finds that the even though future prospects to be considered in respect of the persons aged below 40 years was to be made by effecting enhancement

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only by 50 % as ordered in **Sarla Varma Vs. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**, the Tribunal has virtually added 100% while fixing the same as Rs.10000/-, that too, in respect of a student, who was pursuing studies in a professional college. This Court finds that under no circumstances can the Award be called 'unjust' by the appellants. We find no interference is warranted in this appeal for enhancement. Appeal is devoid of any merit. It stands dismissed accordingly.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**K. HARILAL,
JUDGE**

kmd

/True copy/

P.A. to Judge