

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

MACA.No. 1165 of 2015 ()

AGAINST THE AWARD IN OPMV 72/2010 of MACT, NORTH PARAVUR DATED
06.02.2015

APPELLANT(S)/PETITIONERS:

1. C.M.ABDUL MAJEED, AGED 45 YEARS
S/O.MAKKAR, CHALANATH HOUSE, P.O.ERiyAD
(VIA) KODUNGALLOOR, THRISSUR DISTRICT, PIN: 680 666.

2. C.M.NOORUDHEEN,
S/O.MAKKAR, CHALANATH HOUSE, P.O.ERiyAD
PRESENTLY RESIDING AT NEAR CHERAMAN GROUND, ERIYAD
THRISSUR DISTRICT, PIN: 680 666.

3. ABDUL JALEEL,
S/O.MAKKAR, CHALANATH HOUSE
P.O. ERIYAD (VIA), KODUNGALLOOR, THRISSUR DISTRICT
PIN: 680666.

BY ADVS.SRI.K.A.SHAMSUDEEN
SRI.K.J.MOHAMMED ANZAR

RESPONDENT(S)/RESPONDENTS:

1. MOHAMMED SHAFEEQUE @ SHAFEEQUE
S/O.MAKKAR, CHALANATH HOUSE, P.O.ERiyAD
(VIA)KODUNGALLOOR, THRISSUR DISTRICT, PIN: 680 666.

2. MOHAMMED SALIM C.M.,
S/O.MAKKAR, CHALANATH HOUSE, P.O.ERiyAD
(VIA)KODUNGALLOOR, THRISSUR DISTRICT, PIN: 680 666.

3. THE ORIENTAL INSURANCE CO. LTD.
KODUNGALLOOR BRANCH, MANAPPAT BUILDING, NORTH NADA
KODUNGALLOOR, THRISSUR DISTRICT, PIN: 680 664.

R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

**P.R. RAMACHANDRA MENON
&**

ANIL K. NARENDRAN, JJ.

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M.A.C.A. No.1165 of 2015

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Dated, this the 21st day of December, 2015

JUDGMENT

Anil K. Narendran, J.

The appellants are the claimants in O.P.(M.V.) No. 72 of 2010 on the file of the Additional Motor Accident Claims Tribunal, N.Paravur. It was an application filed under Section 163A of the Motor Vehicles Act, claiming compensation for the death of one Khadeeja in a motor accident occurred on 30.09.2009, on the Vypin-Munambam road, involving a motorcycle bearing registration No. KL-47/7705 owned, driven and insured by the respondents 1 to 3. The deceased was a pillion rider in the motor cycle.

2. Before the Tribunal, Exts. A1 to A6 were marked on the side of the appellants. After considering the materials on record, the Tribunal held that Khadeeja died due to the injury sustained in the accident and that the appellants being her legal heirs are entitled for payment of compensation. The Tribunal

awarded a sum of ₹68,335/-, which was rounded to ₹69,000/-, towards compensation, together with interest at the rate of 8% per annum from the date of petition till deposit and the 3rd respondent insurer was held liable to pay the same to the appellants.

3. Inadequacy of the compensation awarded by the Tribunal under different heads is the subject matter of this appeal.

4. We heard the arguments of the learned counsel for the appellants and also the learned counsel appearing for the 3rd respondent insurer.

5. The sole issue that arises for consideration in this appeal is as to whether the compensation awarded by the Tribunal under different heads represents just and reasonable compensation.

6. The 3rd respondent insurer has admitted that the vehicle involved in the accident was covered by a valid package policy covering pillion rider. The claim petition is one filed under Section 163A of the Motor Vehicles Act. Section 163A of the Motor Vehicles Act deals with special provisions as

to payment of compensation on structured formula basis, which was inserted by Act 54 of 1994, with effect from 14.11.1994. The purpose of Section 163A of the Act and the Second Schedule is to avoid long drawn litigation and delay in payment of compensation to the victims and their heirs who are in dire need of relief. A claimant who chooses to lodge a claim under Section 163A of the Act in respect of a fatal accident shall be entitled for the compensation outlined in the table to the Second Schedule to the Act and also the amounts specified in Para.3 of the Schedule under general damages. As per Para.3 of the Second Schedule, in case of death, in addition to the compensation outlined in the table to the Second Schedule, the claimant shall be entitled for ₹2,000/- towards funeral expenses; ₹5,000/- towards loss of consortium; if the beneficiary is the spouse; ₹2,500/- towards loss of estate; and towards medical expenses, the actual expenses incurred before death, supported by bills/vouchers, but not exceeding ₹15,000/-.

7. The appellants contended that, at the time of accident the deceased was aged 65 years and earning a

monthly income of ₹3,000/- by running a poultry farm at her house. But, they have not chosen to produce any materials in support of the said claim. By running a poultry farm, the deceased could have easily earned a monthly income of ₹3,000/- in the year 2009. Even otherwise, taking the deceased as a homemaker, it is reasonable to fix her monthly income at ₹3,000/-, for the gratuitous services rendered with love and affection to the family and managing the household affairs. Considering the fact that the accident occurred in the year 2009, it is only reasonable to fix the notional annual income of the deceased at ₹36,000/-. Therefore, the compensation in case of death, as indicated in the Second Schedule to the Motor Vehicles Act comes to ₹1,80,000/-. After deducting 1/3rd towards personal expenses, the extent of compensation payable under the head loss of dependency will come to **₹1,20,000/-**. The Tribunal awarded only a meagre sum of ₹33,335/- under this head. In the result, the appellants will be entitled for an additional compensation of ₹86,665/- under this head.

8. In a claim filed under Section 163A of the Act, the

actual loss/expenses suffered by the claimant is irrelevant while ascertaining the compensation payable under different heads. Whatever be the amount spent, the claimant will get only ₹2,500/- towards funeral expenses. Similarly, the maximum amount payable under the heads, loss of consortium, loss of estate and medical expenses can only be ₹5,000/-, ₹2,500/- and ₹15,000/- respectively. In that view of the matter, the Tribunal should not have awarded the appellants a sum of ₹5,000/- towards transportation charges and a further sum of ₹10,000/- towards loss of love and affection. Similarly, the Tribunal should have awarded only ₹2,500/- and ₹2,000/- respectively towards loss of estate and funeral expenses. Thus, the compensation payable to the appellants as determined in terms of the Second Schedule of the Act is as follows:

Sl. No.	Head of claim	Awarded by the Tribunal	Determined in terms of Second Schedule
1	Loss of dependency	₹33,335/-	₹1,20,000/-
2	Funeral expenses	₹10,000/-	₹ 2,000/-
3	Loss of estate	₹ 10,000/-	₹ 2,500/-
4	Transportation to hospital	₹ 5,000/-	Nil
5	Loss of love and affection	₹ 10,000/-	Nil

Sl. No.	Head of claim	Awarded by the Tribunal	Determined in terms of Second Schedule
6	Total	₹ 68,335/-Rounded off to ₹69,000/-	1,24,500/-

9. However, we notice that in **Puttamma v. K.L.Narayana Reddy (2013 (15) SCC 45)**, the Apex Court considered the applicability of the Second Schedule of the Motor Vehicles Act in the present scenario and observed that, the Second Schedule which was enacted in the year 1994 has now become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy. Accordingly, the Apex Court directed the Central Government to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to the amendment of Second Schedule as proposed or made by the Parliament. The Apex Court directed further that, till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of the Act or amendment is made by the Parliament, children upto the age of 5 years shall be entitled for a fixed compensation of

₹1,00,000/- and persons more than 5 years of age shall be entitled for fixed compensation of ₹1,50,000/- or the amount that may be determined in terms of Second Schedule, whichever is higher and such amount is to be paid if any application is filed under Section 163A of the Act. Paras.53, 54, 57 and 58 of the judgment read thus:

"53. Considering the current trend of inflation cost of food grains and all other items, Mr. P.P. Malhotra, Senior Advocate, *Amicus Curiae* submitted that for just compensation the multiplier should be enhanced to 24-25 years. Further, according to him, while calculating the compensation, the amount payable towards dependency should be increased as the life expectancy is upto 70-75 years and secondly after 10 years of earning capacity it should be doubled in view of escalation of cost of living and progressive increase in the income. Keeping in view the cost of living, the Central Government is required to amend the Second Schedule [See S.163A(3)]. The Second Schedule was enacted by Act 54 of 1994 w.e.f. 14.11.1994. Now more than 19 years have passed but no amendment has been made. Cost of living has gone up manifolds.

54. In view of finding recorded above, we hold that Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.

55. xxx xxx xxx

56. xxx xxx xxx

57. From the proposed Bill we find that there is a proposal to change the multiplier applicable for different age groups; it does not contemplate schedule structure of compensation. The factors to be considered for working out compensation are (a) age of the victim (b) multiplier (c) annual income up to ₹1,00,000/- (the maximum annual income for calculation of compensation will be deemed to be ₹1,00,000/-even if the income exceeds ₹1,00,000/-). Separate provisions have been made for grievous injury and non-grievous injury etc.

58. The Central Government was bestowed with duties to amend the Second Schedule in view of S.163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of S.163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of ₹1,00,000/-(Rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of ₹1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in

terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under S.163-A of the Act, 1988."

10. Though the total compensation payable to the appellants, as determined in terms of the Second Schedule is only ₹1,24,500/- (Rupees One Lakh Twenty Four Thousand and Five Hundred only), in view of the judgment of the Apex Court in Puttamma's case (supra), they are entitled for payment of a fixed compensation of ₹1,50,000/- (Rupees One Lakh Fifty Thousand only). In the result, the total compensation payable to the appellants are refixed as **₹1,50,000/- [Rupees One lakh Fifty thousand only]**. After deducting ₹69,000/-already awarded by the Tribunal, the balance compensation payable to the appellants will come to **₹81,000/- [Rupees Eighty One Thousand only]**. For the aforesaid additional compensation, the claimants will be entitled for interest at the rate of 9% per annum from the date of application till realisation.

11. Since the insurance coverage of the vehicle involved in the accident is admitted, the 3rd respondent insurer shall deposit before the Tribunal the additional

M.A.C.A. No.1165 of 2015. : 10 :

compensation awarded in this appeal together with interest, within a period of one month from the date of receipt of a certified copy of this judgment.

The appeal stands disposed of.

Sd/-
P. R. RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K. NARENDRAN,
JUDGE

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True copy

P.S.to Judge