

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

MACA.No. 1406 of 2007 ()

AGAINST THE AWARD IN OPMV 214/2001 of M.A.C.T.,KOZHIKODE
DATED 16-11-2006

APPELLANT(S)/PETITIONERS:

1. M.K.ABOOBACKER, S/O MUHAMMED,
AGED 50 YEARS.

2. MAIMOONATH, W/O ABOOBACKER,
AGED 35 YEARS.

3. M.K.SAIDMUHAMMED(MINOR), AGED 18 YEARS,
DOB 17-7-1988.

4. M.K.RASHEED(MINOR), AGED 15 YEARS,
DOB 6-4-1991.

5. M.K.SHAJAHAN(MINOR), AGED 9 YEARS,
DOB 30-9-1997.
MINORS ARE REP. BY THEIR FATHER AND LEGAL
GUARDIAN M.K.ABOOBACKER, ALL ARE RESING AT
PUNATHIL VEEDU, KOMAMBUZHA, CHATHAMPARAMBA
FEROKE COLLEGE POST, KOZHIK

BY ADVS.SMT.LATHA PRABHAKARAN
SRI.K.M.JAMALUDHEEN

RESPONDENT(S)/RESPONDENTS:

1. K.MUHAMMED, AGE AND FATHER'S NAME
NOT KNOWN, RESIDING AT KUNNATH HOUSE, MADAVOOR
NARIKUNI POST, KOZHIKODE.

2. THE ORIENTAL INSURANCE CO. LIMITED,
BRANCH OFFICE, MAVOOR ROAD, KINGSWAY BUILDING
KOZHIKODE.

R,R.2 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1406 of 2007

Dated this the 20th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The parents and brothers of a minor boy who died in an accident, are the appellants herein. The accident occurred on 28.10.2000 at about 10 a.m. while the deceased was walking along the extreme side of Kozhikode-Feroke road. He was hit down by a lorry bearing registration No.KL-11-A9601. Even though he was immediately taken to the Medical College Hospital, Kozhikode, he died on the same day. The only question is regarding the quantum of compensation.

2. We heard learned counsel on both sides.

3. As against the claim of Rs.2 Lakhs, the Tribunal granted an amount of Rs.1,52,000/- under the following heads:

Dependency : Rs.1,50,000/-

Funeral expenses : Rs. 1,000/-

Transportation charges : Rs. 1,000/-

Actually, for dependency a global amount has been awarded, without going into the schedule and the method of compensation provided under the Act. This is one of the aspects under attack by the learned counsel for the appellant. It is also submitted that for pain and suffering and for loss of love and affection, no amount has been granted and for funeral expenses only a sum of Rs.1,000/- has been granted.

4. As far as grant of compensation where child victims are involved, the law is now well settled. Under the schedule to the Motor Vehicles Act also, method has been provided. The child being a non earning member, we can fix only a notional income. The deceased herein was only aged 7 years and the accident occurred in the year 2000. Therefore, we adopt the notional income at Rs.15,000/- annually and the maximum multiplier is 15. The total amount under the head of loss of dependency will thus come to Rs.2,25,000/-.

5. Learned counsel for the insurance company submitted that there should be proper deduction for personal expenses. In a matter like this where the victim is a child, we do not agree with the

contention that for personal expenses, 50% will have to be deducted as contended by the learned counsel for the insurance company. As far as child victim is concerned, when the amount is limited to Rs.15,000/- annually, we are not considering the future prospects also. The same is also a reason for rejecting the contention of the learned counsel for the insurance company.

6. As far as the amount towards pain and suffering, we grant a sum of Rs.10,000/- and for loss of love and affection also, we grant an amount of Rs.1 lakh. For funeral expenses, we award a sum of Rs.10,000/-.

Therefore, the total compensation is refixed as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Dependency	150000	225000
Funeral expenses	1000	10000
Transportation charges	1000	1000
Pain and suffering		10000
Loss of love and affection		100000
Total		346000

(Rupees Three Lakhs and forty-six thousand only)

The enhanced amount 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 a period of three months.

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

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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