

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

MACA.No. 2141 of 2015

AGAINST THE AWARD IN OPMV 1951/2013 of M.A.C.T., KOTTAYAM
DATED 26-02-2015

APPELLANT(S)/PETITIONERS:

1. MR.VASUDEVAN NAIR @ VASUKUTTAN NAIR,
AGED 48 YEARS,
S/O. GOPINATHAN NAIR, CHERIYANPARAMBIL HOUSE,
MALAKUNNAM P.O., CHANGANACHERRY.

2. MRS. GEETHA VASUDEVAN @ GEETHAKUMARI,
AGED 46 YEARS,
W/O. VASUDEVAN NAIR @ VASUKUTTAN NAIR,
CHERIYANPARAMBIL HOUSE, MALAKUNNAM P.O.,
CHANGANACHERRY.

3. MR. VIJIN V.NAIR, AGED 24 YEARS,
S/O. VASUDEVAN NAIR @ VASUKUTTAN NAIR,
CHERIYANPARAMBIL HOUSE, MALAKUNNAM P.O.,
CHANGANACHERRY.

4. VISHAK V.NAIR, AGED 24 YEARS,
S/O. VASUDEVAN NAIR @ VASUKUTTAN NAIR,
CHERIYANPARAMBIL HOUSE, MALAKUNNAM P.O.
CHANGANACHERRY.

BY ADVS.SRI.P.M.JOSHI
SMT.SIJI K.PAUL
SMT.ELIZABETH KOSHY

RESPONDENT(S)/RESPONDENT NO.3:

THE DIVISIONAL MANAGER,
NEW INDIA INSURANCE COMPANY LIMITED, KOTTAYAM,
PIN-686 001.

BY ADV. SRI.N.S.NAJEEB
SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 08-10-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

M.A.C.A. No. 2141 of 2015

Dated this the 8th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

This is an instance where the tragic demise of a boy aged 18 years due to a road traffic accident is sought to be capitalised seeking for further compensation, despite the awarding of ₹9.75 lakhs, as against the claim limited to ₹10 lakhs.

2. The sequence of events is as follows: The deceased, on the fateful day, was travelling as a pillion rider on the motorcycle bearing Registration No.KL-33-6548. While so, a bus bearing Registration No.KL-33-4548 which was proceeding along the Changanacherry - Vazhoor road, came and dashed

against the motorcycle on 17/4/2013 causing fatal injuries, ultimately leading to the death of the pillion rider. This was sought to be compensated by the parents and siblings by filing the claim petition before the Tribunal. The contention raised by the claimants was that the deceased was generating income to an extent of ₹6,000/- per month by virtue of tuition and such other activities being pursued by him. The owner, driver and the insurer of the vehicle were arraigned in the party array as respondents 1, 2 and 3. No oral evidence was adduced by either side and the evidence only consists of Exts.A1 to A12. After analysing the evidence on record, the Tribunal held that the accident was solely due to the negligence on the part of the driver of the bus and liability was sought to be fixed accordingly.

3. Despite the vague averments in the claim petition as to the alleged avocation of the deceased and in spite of lack of any evidence in this regard, either oral or documentary, the Tribunal reckoned ₹5,500/- and added 50% more to fix the multiplicand. The loss of dependency was worked out, after

deducting the personal expenses and adopting a multiplier '18', thus, granting a sum of ₹8,91,000/- (as against the loss of dependency claimed ₹8 lakhs). The amounts awarded by the Tribunal under various heads as given in the table in paragraph-9 of the award, is reproduced below for convenience of reference.

1.	Transport to hospital	- ₹	3,000.00
2.	Damage to clothing	-	1,000.00
3.	Funeral expenses	-	25,000.00
4.	Medicines	-	Nil
5.	Ambulance charges	-	Nil
6.	Loss of dependency	-	8,91,000.00
7.	Pain and sufferings	-	5,000.00
8.	Loss of love & affection	-	40,000.00
9.	Loss of estate	-	10,000.00
10.	Nervous shock and mental agony of the petitioners	-	Nil
Total		- ₹	9,75,000.00
		=====	

4. The learned counsel for the appellants submits that only a sum of ₹5,000/- has been given towards pain and suffering; that interest awarded by the Tribunal is only @ 8.5% and further that a sum of ₹1 lakh each ought to have been awarded towards loss of love and affection.

5. The basic point to be considered is whether the

award passed by the Tribunal is 'just' award as envisaged in Sec.168 of the M.V. Act. There is no dispute with regard to the facts and circumstances in respect of the accident and also as to the age and status of the deceased who, even, according to the learned counsel, had only completed 'Plus Two' course. Considering the award in its entirety, this Court finds that substantial amounts have been awarded by the Tribunal under different heads, even beyond the claim and expectation of the appellants. Considering the totality of facts and circumstances, this Court finds that no further enhancement is possible or will be justified under any circumstance. Interference is declined and the appeal stands dismissed.

Sd/-
(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-
(K. HARILAL, JUDGE)

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P.S. to Judge