

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

MACA.No. 1771 of 2011 ()

AGAINST THE AWARD IN OPMV 2038/2000 of MACT, MAVELIKKARA

APPELLANTS/PETITIONERS 1 TO 4:

1. SUBAIDA, EDAYIL VEEDU (KADAYIL VEEDU)
ERUVA MURI, KAYAMKULAM.

2. SURYA.N,
EDAYIL VEEDU (KADAYIL VEEDU), ERUVA MURI, KAYAMKULAM.

3. SURIYAS.N,
EDAYIL VEEDU (KADAYIL VEEDU), ERUVA MURI, KAYAMKULAM.

4. SUMAYYA.N,
EDAYIL VEEDU (KADAYIL VEEDU), RUVA MURI, KAYAMKULAM.

BY ADVS.SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.NAVA VARGHESE

RESPONDENTS/RESPONDENTS:

1. SASI, POTHANATHARA HOUSE
KARUVALIPADY, KOCHI 682 003

2. THE MANAGING DIRECTOR,KERALA STATE
ROAD TRANSPORT CORPORATION, THIRUVANANTHAPURAM.
695 001

3. THE NATIONAL INSURANCE CO.LTD.,
THIRUVANANTHAPURAM. 695 001

4. HAWAKUTTY,EDAYIL VEEDU
KADAYIL VEEDU, ERUVA MURI, KAYAMKULAM.690502

R3 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1771 OF 2011

Dated this the 29th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimants aggrieved by the award in O.P.(MV)No.2038/2000 of the Motor Accidents Claims Tribunal, Mavelikkara. They are the legal heirs of deceased Nazarudeen @ Babu, who died in a motor accident which occurred on 8.6.2000 at about 5 p.m. near Oachira Residency Hotel on Kollam-Alappuzha road. The deceased was travelling in a jeep bearing Reg.No.KK 01J-6298 and the accident occurred when the KSRTC bus bearing Reg.No.KL-15-3248 which came from the opposite side dashed against the same. Apart from the deceased, another person named Samsudeen also sustained injuries and both the cases were disposed of together by a common award by the Tribunal.

2. Heard the learned counsel on both sides.
3. It is submitted by the learned counsel for the appellants that

the monthly income claimed at ₹6,000/- was reasonable. Before the Tribunal Ext.A15 series documents have been produced to indicate that he was having leather business. But on the ground that the monthly income is not proved by documentary evidence, the claim in full was not accepted. But the Tribunal has fixed the income at a notional amount of ₹2500/- which is too low, it is submitted

4. It is also submitted that the deduction towards personal expenses of the deceased ought to have been $\frac{1}{4}$ instead of $\frac{1}{3}$ since there are four claimants. The learned counsel also sought enhancement towards loss of consortium, loss of estate and funeral expenses and also submitted that for loss of love and affection, nothing has been granted by the Tribunal.

5. As against the total claim of ₹7 lakhs, ₹ 3,29,000/- has been awarded by the Tribunal. The table below will show the compensation awarded by the Tribunal under various heads :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Damage to clothing	500
Pain and suffering	5000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Medical expenses	2000
Loss of dependency	300000
Loss of consortium	10000
Loss of estate	5000
Ambulance charges	2500
Funeral expenses	40000
Total	329000

6. As far as the monthly income is concerned, even though no documentary evidence is there, normally if the claim is not exorbitant, the Tribunal or the Court can arrive at a reasonable figure for fixing dependency compensation. The said principle has been laid down by the Apex Court in **Syed Sadiq and others v. Divisional Manager, United India Insurance Company (AIR 2014 SC 1052)**. Here the claim is at ₹6,000/- . The accident is in the year 2000. We consider an amount of ₹3,000/- as reasonable in view of the fact that the deceased was conducting leather business which is proved by Ext.A15 series. Towards personal expenses, $\frac{1}{4}$ will have to be deducted and the multiplier to be adopted is 15. Therefore, the dependency compensation will be ₹4,05,000/- (3000 x 12 x 15 x $\frac{3}{4}$). We award an

amount of ₹1,00,000/- towards loss of consortium and ₹ 25,000/- towards funeral expenses. As far as loss of love and affection is concerned, there are three minor children apart from the mother and widow. Therefore we award a total amount of ₹1,50,000/- towards loss of love and affection.

7. Accordingly, the award is modified as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Damage to clothing	500
Pain and suffering	5000
Medical expenses	2000
Loss of dependency	405000
Loss of consortium	100000
Loss of estate	5000
Ambulance charges	2500
Funeral expenses	25000
Loss of love and affection	150000
Total	695000 (Rupees six lakhs ninety five thousand only)

8. The appellants will be entitled to interest @ 9% per annum for the enhanced amount of compensation. We direct the Insurance Company to deposit the amount less the amount already deposited

within a period of three months from the date of receipt of a copy of this judgment. The amount will be shared in the proportion fixed by the Tribunal as per the award in paragraph 13. The amount due towards minor claimants will be deposited in a Nationalized Bank. If appellant Nos.2 to 4 have become major, they can withdraw the amount.

The appeal is accordingly allowed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.