

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

MACA.No. 1861 of 2011 ()

AGAINST THE AWARD IN OPMV 1397/2001 of MACT, MAVELIKKARA
DATED 30-12-2010

APPELLANT(S)/APPELLANTS:

1. SREEDHARAN PILLAI
SREENILAYAM, SOUTH MANKUZHY
PULLIKKANAKKU P.O., MAVELIKKARA.

2. VIJAYAMMA,
SREENILAYAM, SOUTH MANKUZHY, PULLIKKANAKKU P.O.
MAVELIKKARA.

3. SUJITHRA,
ERRONEOUSLY SHOWN AS SUMITHRA IN THE AWARD
SREENILAYAM, SOUTH MANKUZHY, PULLIKKANAKKU P.O.
MAVELIKKARA.

BY ADV. SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)

RESPONDENT(S)/RESPONDENTS:

1. MURALEEKRISHNAN
S/O.GOPALAKRISHNAN, KRISHNA KRIPA, HOUSE NO.432
WARD VII, NORTH OF KOCHU ULLOOR, ULLOOR
TRIVANDRUM-695 011.

2. SASIDHARAN NAIR,
SINDOORAM, ELAMANNOOR P.O., ADOOR-691 524.

3. THE BRANCH MANAGER
NATIONAL INSURANCE CO.LTD.,
PATHANAMTHITTA-689 645.

R,R3 BY ADV. SRI.MATHEWS JACOB (SR.)

R,R3 BY ADV. SRI.P.JACOB MATHEW

R BY SRI.JACOB MATHEW.P

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A No.1861 of 2011

Dated this the 7th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The claimants before the Tribunal are the appellants. They are the parents as well as the sister of deceased late Sri Sujith Kumar. The accident occurred on 18.02.2001 at 2.45 p.m near Sankaramangalam Junction in Kollam-Alappuzha road. The deceased was travelling in a motor cycle bearing Reg.No.KL7X-996 along with Satheesh Kumar as pillion rider when the offending vehicle dashed against the same. He succumbed to the injuries. As against the total claim of Rs.12,95,000/-, Rs.1,80,500/- has been granted by the Tribunal.

2. The learned counsel for the appellants submitted that instead of correct multiplier 18, 11 alone has been taken as the multiplier by considering the age of the 1st appellant which is not the correct method going by the judgment in **Sarla Verma v. Delhi Transport Corporation** [2010(2) KLT 802] and the later decision of the Apex Court in **Amrit Bhanu Shali v. National Insurance Co. Ltd.** [2012 ACJ 2002]. It is further pointed out that the future prospect of the deceased has not been

considered.

3. It is explained by the learned counsel for the appellants that the deceased was aged 20 years and was a student in Degree level and had a part time job as collection agent in a laundry service and he was earning a monthly income of Rs.2,250/-. Apart from the same, he was selected for undergoing the Basic Cabin Crew training conducted by the "Frankfinn Management Consultants". Ext.A24 is a letter dated 1.2.2001 which shows that he was selected to join that course. If he had completed the training, he would have earned at least Rs.10,000/- per month by getting a proper employment. It is submitted that even if he is treated as a student then also a proper notional income should have been fixed for arriving at a fair compensation. Instead, the Tribunal rejected Ext.A24 and accepted the income that he was getting as per the part time job and then adopted the multiplier and towards loss of dependency, only Rs.1,48,500/- has been granted and that amount has been arrived at after deducting 50% for personal expenses.

4. For pain and suffering Rs.5,000/-, loss of estate Rs.5,000/- and for funeral expenses Rs.4,000/- alone have been granted. An amount of Rs.2,500/- has been granted as

Ambulance Charges, Rs.500/- has been granted towards damage to clothing and towards any other heads Rs.15,000/- has also been granted.

5. The learned counsel for the Insurance Company submitted that there is no justification in claiming Rs.10,000/- as monthly income since he was not employed as a Basic Cabin Crew. He had only been invited for attending the training programme. Hence the amount Rs.2,250/- taken by the Tribunal as his monthly income is justified.

6. Going by the pleadings of the appellants, the deceased was studying for degree course and the learned counsel for the appellants submitted that he had been studying for B.Com. and was having part time job in the laundry service. Evidently since he was pursuing the degree course and was having a part time job, it cannot be said that he was having an employment of a regular nature with an establishment. The Tribunal has accepted Rs.2,250/- as his monthly income which the deceased was getting from his part time job and adopted a multiplier of 11. The question is whether the same is a correct method since he had been pursuing his studies and obviously he was doing a part time job as a collection agent in order to pursue his studies. In

respect of the non earning members, a notional income will have to be taken. As far as a student also is concerned, for arriving at a fair compensation, the correct method is to fix a notional income. Herein the Tribunal has not granted anything by way of considering his future prospects along with Rs.2,250/- even though Rs.15,000/- has been granted towards “any other heads”.

7. In the light of the above, we have to fix a fair and just compensation. It will be proper to adopt Rs.3,500/- as the notional monthly income.

8. For adopting the correct multiplier, the age of the deceased has to be taken going by the dictum laid down in **Sarla Verma v. Delhi Transport Corporation** [2010(2) KLT 802] as well as **Amrit Bhanu Shali v. National Insurance Co. Ltd.** [2012 ACJ 2002(para.17)]. Apart from the same, herein the 1st appellant was only aged 52 years at the time of the accident; appellant No.2 was aged 40 and appellant No.3 was aged 14. Thus among the claimants, a younger sister is also included. Therefore, we will not be justified in taking the average age of the parents along with that of the minor sister. Therefore, the correct multiplier will be 18.

9. Towards funeral expenses, only Rs.4,000/- is granted

and we enhance the same to Rs.25,000/-. Towards pain and suffering, instead of Rs.5,000/-, we grant Rs.10,000/-. For loss of expectation of life of the deceased, no amount is granted by the Tribunal, which is one of the items of heads under which the claimants are entitled for grant of amount. Of course, we are considering this item since towards various heads meagre amounts have been granted by the Tribunal and we award an amount of Rs.25,000/- towards loss of expectation of life. Towards mental shock and agony of the parents coupled with loss of love and affection of the deceased brother to the sister, a reasonable amount ought to have been granted by the Tribunal. We grant Rs.40,000/- under this head. As rightly pointed out by the learned counsel for the Insurance Company the amount of Rs.15,000/- granted towards any other heads is not correct. But we find that towards loss of estate Rs.5,000/- alone has been granted. Therefore we convert both heads into loss of estate and a total amount of Rs.25,000/- is granted. Accordingly we refix the compensation in the following manner:

<i>Sl.No.</i>	<i>Description</i>	<i>Amt.</i>
1	Funeral Expenses	Rs. 25,000.00
2	Ambulance charges	Rs. 2,500.00
3	Damage to clothing	Rs. 500.00
4	Pain and suffering	Rs. 10,000.00

<i>Sl.No.</i>	<i>Description</i>	<i>Amt.</i>
5	Loss of dependency	Rs. 3,78,000.00
6	Loss of estate etc.	Rs. 25,000.00
7	Mental shock and agony and loss of love and affection to mother and sister	Rs. 40,000.00
8	Loss of expectation of life of deceased	Rs. 25,000.00
	Total	Rs. 5,06,000.00

(Rupees Five lakhs six thousand only)

The appellants will be entitled to a total compensation of Rs.5,06,000/- (Rupees Five lakhs six thousand only) from the date of petition along with 9% interest per annum for the enhanced amount. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimants can withdraw the amount.

The appeal is allowed accordingly. No costs.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

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P.S to Judge