

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

MACA.No. 1334 of 2010 ()

AGAINST THE AWARD IN OPMV 1581/2007 of M.A.C.T.,KOZHIKODE DATED 15-09-
2009

APPELLANT(S)/PETITIONERS:

1. RATNAKARAN, AGED 46 YEARS,
S/O.SAMIKUTTY.

2. SHEMI, AGED 38 YEARS,
W/O.RATNAKARAN.

3. ABHINAND, AGED 10 YEARS,
S/O.RATNAKARAN, REPRESENTED BY MOTHER, SHEMI.
ALL ARE RESIDING AT VATTAMBARATH HOUSE, THIRUVANGOOR
VENGALAM P.O., KOZHIKODE DISTRICT.

BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU
SRI.K.R.RANJITH

RESPONDENT(S) :

1. CHAIRMAN & MANAGING DIRECTOR,
DR.PRAKASAM HOMEOPATHIC PHARMACEUTICALS, PVT. LTD.
6/190, WYNAD ROAD, NADAKKAVU
KOZHIKODE-673 001.

2. ABDUL RAHIMAN, S/O.IBRAHIM.P.,
PANAMPILAKKAL HOUSE, MADAVOOR P.O., KOZHIKODE. (DELETED)

3. BAJAJ ALIANZ GENERAL INSURANCE
COMPANY LTD., 5TH FLOOR, M SONS ARCADE
CHEROOTTY ROAD, KOZHIKODE-673 001.

(R2 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA 1292/2015
DT.27.3.2015)

R,R1 BY ADV. SMT.P.VIJAYAMMA
R,R1 BY ADV. SRI.PRINSUN PHILIP
R3 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.**

M.A.C.A.No.1334 of 2010

Dated this the 21st day of May, 2015

JUDGMENT

Ramachandran Nair, J.

The parents of a girl child aged 11 years at the time of accident, along with their son, appellant No.3 are before this Court seeking enhancement of compensation.

2. The accident occurred on 5.5.2007 at about 5.30 p.m.. She was standing on the eastern side of Kannur Road, near Vengalam bus stop when the offending vehicle, a car bearing Reg. No.KL-11/N.9495 knocked down the girl. She succumbed to the injuries on 7.5.2007 at Baby Memorial Hospital, Kozhikode. The total compensation claimed was Rs.4,50,000/- and the Tribunal has awarded an amount of Rs.1,91,221/-. We reproduce hereinbelow the heads under which the claims have been granted:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>
Treatment expenses	1324
Transport to hospital	1500
Pain and suffering	10000
Damage to clothing	500
Funeral expenses	3000
Loss of love and affection	10000
Loss of estate	3000
Loss of dependency	150000
Total	191221

3. Heard both sides.

4. Learned counsel for the appellants, Smt. Manju M. submitted that the deceased was a bright student and therefore a reasonable amount, at least at the rate of Rs.30,000/- per annum should have been adopted for fixing compensation. The Tribunal had arrived at only a sum of Rs.15,000/- annually. Learned counsel relied upon a judgment of the Apex Court in **Kishan Gopal and another v. Lala and others** {(2014) 1 SCC 244}.

5. Learned counsel for the insurance company, Shri Lal George submitted that the deceased was only aged 11 years at the time of

accident. Therefore, the compensation granted by the Tribunal is perfectly justified.

6. We find from the judgment in **Kishan Lal's case** (supra), that the Apex Court was of the view that in the light of the evidence that the boy was assisting his parents in agricultural operations, an amount of Rs.30,000/- can be adopted annually for calculating dependency compensation. Herein, such factors being absent, we find that the said judgment may not help the appellants. But still, the amount of Rs.15,000/- annually will be a low figure considering inflation and therefore we fix it at Rs.24,000/- annually which will be a reasonable amount.

7. For loss of love and affection, the Tribunal granted only a sum of Rs.10,000/- and the appellants are entitled at least for an amount of Rs.1,00,000/- in the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh** {(2013) 3 KLT 89 - SC}. For funeral expenses also, the appellants are entitled for an amount of Rs.25,000/-,

in the light of the dictum laid down in the above decision.

Therefore, we recompute the compensation in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Treatment expenses	1324	1324
Transport to hospital	1500	1500
Pain and suffering	10000	10000
Damage to clothing	500	500
Funeral expenses	3000	25000
Loss of love and affection	10000	100000
Loss of estate	3000	3000
Loss of dependency	150000	360000
Total	191221	501324 (rounded off to 501320)

(Rupees Five lakhs one thousand three hundred and twenty only)

The enhanced amount of compensation 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, within a period of three months. The appellants will have to pay additional court fee for the amount which will be collected by the Tribunal from the amount to be deposited by the insurance company.

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

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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