

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

MACA.No. 1555 of 2010 ()

AGAINST THE AWARD IN OPMV 1835/2006 of PRL.M.A.C.T.,KOZHIKODE
DATED 09-09-2009

APPELLANT(S)/PETITIONERS NO.1 & 2 IN OP(MV):

1. VASU, S/O.VELU, RESIDING AT ERANHONA
MEETHAL HOUSE, KAYALAM POST, VIA:MAVOOR
KOZHIKODE DISTRICT.

2. YESODHA, W/O.VASU, RESIDING AT ERANHONA
MEETHAL HOUSE, KAYALAM POST, VIA:MAVOOR
KOZHIKODE DISTRICT.

BY ADVS.SRI.AVM.SALAHUDIN
SRI.SHEHEERA P.Y.
SRI.G.ARUN GOPAN

RESPONDENT(S)/RESPONDENTS AND PETITIONERS 3 & 4 IN OP(MV):

1. SHAKKEER HUSSAIN,S/O.MOOSA HAJI,
RESIDING AT KOLAKKADAN HOUSE, P.O.CHERUVADI
KODIYATHOOR, KOZHIKODE.

2. T.P.HAMEED, S/O.KAMMUKUTTY, RESIDING AT
THANANGA PARAMBU, CHERUVADI, KODIYATHUR
KOZHIKODE.

3. THE ORIENTAL INSURANCE CO.LTD, DIVISIONAL
OFFICE, SEEMA BUILDING, G.H.ROAD
KOZHIKODE.

4. SHEEBA, D/O.VASU, RESIDING AT ERANHONA
MEETHAL HOUSE, KAYALAM POST, VIA:MAVOOR
KOZHIKODE DISTRICT.

5. SHIJU, S/O.VASU, RESIDING AT ERANHONA
MEETHAL HOUSE, KAYALAM POST, VIA:MAVOOR
KOZHIKODE DISTRICT.

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

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.1555 of 2010-D

Dated this the 24th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimants before the Tribunal, who are the parents as well as brother and sister of the deceased.

2. The deceased Shibu was aged 25 years at the time of the accident, going by the postmortem certificate-Ext.A2. He was riding a motorcycle from Kozhikode to Medical College and when he reached near Thondayad bus stop, the offending vehicle - a bus having Reg.No.KL-13-H-6029 hit him from behind. He was admitted to the Medical College Hospital with serious injuries and he died.

3. It was claimed that he was a Mechanic earning Rs.7,000/- per mensem. The Tribunal below, in the absence of the evidence to show that he was a Mechanic earning Rs.7,000/-, adopted the multiplicand as Rs.2,500/-. Paragraph 10 of the

award shows the details of the compensation granted by the Tribunal as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Transport to hospital	Rs. 1,500.00
2	Damage to clothing	Rs. 500.00
3	Funeral expenses	Rs. 3,000.00
4	Loss of love and affection	Rs. 10,000.00
5	Loss of estate	Rs. 7,500.00
6	Loss of dependency	Rs. 3,00,000.00
	Total	Rs. 3,22,500.00

4. The learned counsel for the appellants submitted that a reasonable income of a Mechanic should have been adopted; whereas the learned counsel for the Insurance Company submitted that there is no evidence to prove the income as Rs.7,000/-. Since the accident is of the year 2006, we adopt an amount of Rs.5,000/- as the income for fixing compensation.

5. Towards loss of love and affection, loss of estate and funeral expenses, the Tribunal has granted Rs.10,000/-, Rs.7,500/- and Rs.3,000/- respectively and we enhance the same to Rs.1,00,000/-, Rs.30,000/- and Rs.25,000/- respectively. For pain and suffering of the deceased, nothing has been granted by the Tribunal and we grant Rs.10,000/- towards the same.

6. The award is accordingly modified as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Transport to hospital	Rs. 1 ,500.00
2	Damage to clothing	Rs. 500.00
3	Funeral expenses	Rs. 25,000.00
4	Loss of love and affection	Rs. 1,00,000.00
5	Loss of estate	Rs. 30,000.00
6	Loss of dependency (5000X12X1/2X18)	Rs. 5,40,000.00
7	For pain and suffering	Rs. 10,000.00
	Total	Rs. 7,07,000.00

(Rupees Seven lakhs and seven thousand only)

The appellants will be entitled to a total compensation of Rs.7,07,000/- (Rupees Seven lakhs and seven thousand only) and the enhanced amount will carry 9% interest per annum from the date of petition. 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.

7. The appellants shall remit the court fee for the amount awarded in excess of their claim before the Tribunal or recover it from the amount deposited by the Insurance Company

towards the compensation and the Tribunal will disburse the enhanced amount thereafter to the appellants.

The appeal is allowed accordingly. The parties will bear their respective costs in this appeal.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge