

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

MACA.No. 2445 of 2014 ()

AGAINST THE AWARD IN OPMV 2277/2009 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM DATED 14.5.2014.

APPELLANT IN MACA/PETITIONER IN OP(MV):

1. MADHAVAN AGED 68 YEARS
S/O.KANDAN, VALAVUTHADATHIL HOUSE
NEDUMKULAMGARA MALA, ATHANI, KUSUMAGIRI P.O
KAKKANAD, KOCHI

2. THANKAMMA AGED 60 YEARS
W/O.MADHAVAN, VALAVUTHADATHIL HOUSE
NEDUMKULAMGARA MALA, ATHANI, KUSUMAGIRI P.O
KAKKANAD, KOCHI

3. PRASANTH AGED 28 YEARS
S/O.MADHAVAN, VALAVUTHADATHIL HOUSE
NEDUMKULAMGARA MALA, ATHANI, KUSUMAGIRI P.O
KAKKANAD, KOCHI

4. PRAVEEN AGED 26 YEARS
MADHAVAN, VALAVUTHADATHIL HOUSE, NEDUMKULAMGARA MALA
ATHANI, KUSUMAGIRI P.O, KAKKANAD
KOCHI

BY ADV. SRI.A.P.SUBHASH

RESPONDENTS/RESPONDENTS IN O.P.(M.V.)

1. FATHIMA, 5 305, VALIYAPEEDIACKAL HOUSE, THRIKKAKARA P.O.,
COCHIN- 682030.

2. THE NATIONAL INSURANCE CO. LTD., ERNAKULAM-682016.

3. VYAYALAKSHMI, W/O. MARI.B., 26, VYAYANILAYAM,
ST.THOMAS CHURCH ROAD, OOTY, NEELAGIRI,
TAMILNADU - 643217.

4. THE NATIONAL INSURANCE CO. LTD., KOLKATTA - 700071.

5. ASHOKAN S., S/O.SUBBIAH, AKAMATCHIPURAM,
ATHANGARAIPATTI, PERIYAYUR, TALUK, MADURAI- 625703.

R2 & 4 BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.2445 of 2014

Dated this the 2nd day of February 2015

JUDGMENT

Ramachandran Nair, J.,

This appeal is filed by the appellants who are claimants before the Tribunal. They are aggrieved by the inadequacy of compensation granted consequent to the death of their son Proshob in the accident which occurred on 15.2.2009. Five cases were tried together by the Tribunal. Pursuant to the accident all the travellers of the car bearing Registration No. KL-07/BH 2297 sustained serious injuries. While they were travelling through Coimbatore-Mettupalayam road the car hit the lorry bearing registration No. TN 43/B 4438 parked on the left side of the road.

2. Learned counsel for the appellant submitted that the monthly income arrived at by the Tribunal at Rs. 3,000/- as against the claim of Rs. 4,500/- is too low. He was a Graphic Designer and 3D Animator. He was employed by one Biju

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V.Gopal, Creative Director, 24 Frames Animation and Visual FX, Kochi who had issued certificate as Ext.A9 stating that the deceased had been working as part-time Graphic Designer and 3D Animator from 24.1.2007 onwards. Learned counsel submitted that the non-examination of Sri. Biju will not be fatal as the amount claimed is not exorbitant and reasonable amount could have been arrived at by the Tribunal also.

3. The Tribunal has granted a total compensation of Rs. 4,29,000/- in total. The multiplier adopted is 18 as he was a bachelor, 50% has been deducted for personal expenses. We find that for funeral expenses, only Rs. 15,000/- has been granted. For loss of estate and for pain and suffering nothing has been granted by the Tribunal. Rs. 75,000/- has been granted by the Tribunal towards loss of love and affection.

4. Learned counsel for the Insurance Company submitted that since the deceased was having a Part-time job, Rs. 3,000/- cannot be said to be too low.

5. We have considered the rival submissions. The accident occurred in the year 2009. It is evident that he was being paid

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for job as a graphic designer and 3D animator. Of course the employer has not been examined. Since the claim is not exorbitant, we are of the view that an amount of Rs. 4,000/- can be taken for assessing the compensation.

6. As far as pain and suffering is concerned nothing has been granted by the Tribunal. The death was instantaneous. Therefore, we award an amount of Rs. 5,000/- for pain and suffering. For funeral expenses, we award Rs.25,000/- in the light of the decision of the Apex Court reported in Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC) . Even though, learned counsel for the appellant submitted that no amount has been granted for embalming the body, in the absence of any evidence of payment for the same, we will not be justified in awarding any amount. No amount has been granted for damage to clothing. We award an amount of Rs. 1,000/- for the same.

7. Towards loss of estate, nothing has been granted by the Tribunal. Since the deceased was an youngster at the age of 23, we will be justified in granting a conventional sum for the said item and we grant an amount of Rs. 15,000/- towards loss of

estate. Accordingly, we modify the award as follows:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded (in Rs)</i>	<i>Amount modified (in Rs.)</i>	<i>Basis</i>
1	Loss of income			
2	Transport to Hospital and back to home	15000	15000	
3	Damages to clothing	0	1000	
4	Funeral expenses	15000	25000	
5	Compensation for loss of estate	0	15000	
6	Medical expenses	0	0	
7	Compensation for pain and suffering	0	5000	
8	Compensation for love and affection	75000	75000	
9	Loss of dependency	324000	4,32,000	(4000x12x18x50/100)
	Total	429000	568000	

8. Therefore, the total compensation will be Rs. 5,68,000/- which will carry interest at the rate of 9% per annum from the date of petition for the enhanced amount in the light of the decision of the apex court reported in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513]. Since, the claim was limited to Rs.5,00,000/-, the appellants will have to pay court fee for the amount awarded by this Court.

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Even though, the claim is limited, in the light of decision reported in ***Nagappa v. Gurudayal Singh (2003 (1) KLT 115 (SC)***, there is no restriction for this Court to award amount more than that is claimed.

The amount payable as court fee will be recovered by the Tribunal once the amount of compensation is deposited by the Insurance Company. We permit the appellants to withdraw the amount on deposit by the Insurance Company. No costs.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge

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