

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

MACA.No. 2320 of 2010 ()

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AGAINST THE AWARD IN OPMV 309/2008 OF THE MACT, KALPETTA
DATED 28-07-2010
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APPELLANT(S)/PETITIONERS:

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- 1. BABY KURIAN, S/O. KURIAN, AGED 58 YEARS,
VELIYATH HOUSE, KUZHINILAM, MANANTHAVADY POST
MANANTHAVADY, WAYANADU DISTRICT.**
 - 2. ASWIN BABY, S/O.BABY KURIAN, AGED 19,
VELIYATH HOUSE, KUZHINILAM, MANANTHAVADY POST
MANANTHAVADY, WAYANADU DISTRICT.**

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENT(S):

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- 1. SEBASTIAN PAUL, S/O PETER PAUL,
AGED 53 YEARS, KC XL/1151, EVER SHINE
NEAR FIRE, STATION, PATTATHANAM.P.O.
KOLLAM DISTRICT-691001
(DRIVER CUM OWNER OF THE TATA INDICA NO.
KL 04-J-4856)**
 - 2. ORIENTIAL INSURANCE COMPANY, VADAKARA
(LOCAL BRANCH OF THE INSURER AMARJYOTHI COMPLEX
KADAPPAKKADA.P.O., KOLLAM) PIN-691008
(INSURER OF THE TATA INDICA NO.KL 04-J-4856)
POLICY NO.441404/31/2008/2545.**
 - 3. C.P.SHANAVAS, S/O. P.KOYA, AGED 24 YEARS
CHEMMANAMPALLI, KALPERIL.P.O., ISLAND PIN-682557
LAKSHADEEP D.L.NO.LD/6345/05, KDT (DRIVER OF THE
MOTOR CYCLE NO.KL-07-P-8470).**

4. PRATHEESH.P., AGE AND FATHERS NAME NOT KNOWN,
POOJAPARAMBU, KALAVOOR.P.O. ALAPPUZHA DISTRICT
(OWNER OF THE MOTOR CYCE NO KL-07-P-8470)
MOTOR CYCLE NO INSURANCE. PN-688522. [DELETED]

[RESPONDENT NO.4 IS DELETED FROM THE PARTY ARRAY
AT THE RISK OF THE APPELLANT VIDE ORDER DATED 12.12.2014
IN IA 3814/2014.]

R1 BY ADV. SRI.C.RAJENDRAN
BY ADV. SMT.R.S.SREEVIDYA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VS

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

M.A.C.A.No.2320 of 2010

Dated this the 13th day of July, 2015

JUDGMENT

T.R.Ramachandran Nair, J

The son of appellant No.1 died in an accident on 05-02-2008. The deceased late Edwin Baby was travelling on a motor cycle bearing Reg.No.KL-07/P 8470 from Kollam to Karikode and the accident had occurred near the Karikode Railway over bridge, when the motor cycle hit a Tata Indica car bearing Reg.No.KL 04/J 4856 driven by the first respondent. The second respondent herein is the insurer of the car and the third respondent is the driver of the motor cycle.

2. A total compensation of Rupees 10 lakhs was claimed, but the Tribunal has awarded only Rs.2,22,500/- with interest of 7.5% from the date of filing the petition.

3. The learned counsel for the appellant highlighted the fact that the deceased was studying in TKM Engineering College, Kollam in the final year B.Tech

course. The appellant No.1 was examined as PW1. Evidence was adduced to show that he was a bright student and Exts.A6 to A8 are the documents in support of the same. The learned counsel heavily placed reliance upon Ext.A9 series appointment letters from Infosys, Mysore. We have gone through the said series of documents. He was offered an employment as Software Engineer. It appears that the salary offered is Rs.25,000/- per month and during the training period he will obtain an amount of Rs.19,569/- as stipend.

4. The Tribunal did not rely upon the same and assumed that he was still a student at the relevant point of time and therefore the notional income has been assessed as Rs.3,000/-.

5. Going by the submissions of the learned counsel for the appellant, the crucial question to be considered is whether Ext.A9 could be relied upon for fixing the quantum. Of course, the achievements of the student had resulted in obtaining an offer of appointment as evidenced by Ext.A9. Therefore, the same cannot be

ignored for assessing the compensation herein. It really points out to the fact that he was assured of a job after his course is completed and he was about to complete his course also and only 6 months further classes remained.

6. But at the same time, he was still a student and therefore the assessment should be based on the future prospects and potential of the student. He was in the final year of the engineering course. The assessment made by the tribunal at the rate of Rs.3000/- is a too meagre one. According to us, various factors including the achievements in the academic field and the fact that he was about to complete the professional course, will support the arguments of the learned counsel for the appellant that the quantum of compensation should not be fixed on a reasonable basis. According to us, if an amount of Rs.8,000/- is taken as the notional monthly income, it will be just and fair compensation.

7. Considering the age of the deceased as well as the multiplier used to assess the loss of dependency, we feel that reassessment of compensation is warranted.

The multiplier is adopted as '18' in view of the principles laid down in **Sarala Varma v. Delhi Transport Corporation** [2010 (2) KLT 802 (SC)]. Hence, we refix the just compensation as follows:

Head of claim	Amount Awarded in rupees
(a) Transportation expenses	Rs.10,000/-
(b) Damage to clothing, etc.	Rs.500/-
(c) Pain and suffering	Rs.10,000/-
(d) Loss of dependency (8000x12x18x50/100)	Rs.8,64,000/-
(e) Loss of love and affection	Rs.1,00,000/-
(f) Funeral expenses	Rs.25,000/-
Total	Rs.10,09,500/- (Rupees Ten lakhs nine thousand five hundred)

8. The liability has been apportioned equally between the two vehicles and therefore 50% of the same will have to be satisfied by the second respondent company as well as the balance will have to be borne by the owner and driver of the motor cycle. The owner of the vehicle stands deleted from the party array as per the order in I.A.No.3814/2014. Hence we pass the following order :

9. Out of the total compensation of

Rs.10,09,500/-, Rs.5,04,500/- is fixed as liability on the part of the respondent Nos.1 and 2. Since there is a valid insurance coverage, the second respondent is the one, who is liable to satisfy the amount. The appellant will be entitled for interest at the rate of 9% per annum for the enhanced compensation from the date of the filing of the petition. There will be direction to the second respondent to deposit the amount within a period of three months and make sure that the appellant withdraw the amount. The amount will be apportioned by the appellants as per the same ratio as fixed by the Tribunal (90% to the appellant No.1 and 10% to the appellant No.2).

The petition is allowed.

Sd/-

T.R.RAMACHANDRAN NAIR, JUDGE

Sd/-

K.P.JYOTHINDRANATH, JUDGE

VS

/TRUE COPY/

PA TO JUDGE