

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 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

MACA.No. 2708 of 2009 ()

AGAINST THE AWARD IN OPMV 1093/2005 of MACT VADAKARA
DATED 19-05-2008

APPELLANT(S)/APPELLANTS:

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1. HAMZA, AGED 48 YEARS
KALARIKKAL HOUSE, N.P.ROAD, P.O.MERIKKUNNUI
KOZHIKODE DISTRICT.
 2. SAFIA, W/O.HAMSA, AGED 42 YEARS
KALARIKKAL HOUSE, N.P.ROAD, P.O.MERIKKUNNUI
KOZHIKODE DISTRICT.
 3. NAHALA, 17 YEARS, (MINOR) D/O.HAMZA
(3RD PETITIONER IS THE MINOR AND SHE IS REPRESENTED
BY 2ND PETITIONER WHO IS THE MOTHER AND GUARDIAN
KALARIKKAL HOUSE, N.P.ROAD, P.O.MERIKKUNNUI
KOZHIKODE DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT(S):RESPONDENTS

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- *1. SHAJI.T., S/O.BHARATHAN, AGED 34 YEARS
THANDARAKKAL, PARAPURATH PARAMBA, MANKAVU PO
CALICUT 673 007, (R.C.OWNER OF KL-11-CBUS) (DELETED)
 2. THE ORIENTAL INSURANCE COMPANY LTD
SREENIDHI BUILDING, P.B.NO.27, NARAYANA NAGAR
BADAGARA 673 101, INSURER OF KL-11C 9039 NO.BUS)
- POLICY NO.11149/2005 VALID FROM 22-3-2005 TO
21-03-2006.

(R1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF
THE APPELLANT VIDE ORDER DT.27.2.2013
IN I.A.537/13 IN MACA NO.2708/2009.

R,R2 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 16-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.2708 of 2009

Dated this the 16th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the appellants claiming compensation consequent on the death of late Sri.Shafeeque - son of appellants 1 and 2 and the brother of appellant No.3 on 14.07.2005. The accident occurred at 9.30 a.m when he was riding his motorcycle bearing Registration No.KL 11-U 4528 from Kozhikode to his residence. At a place called Eranhipalam, the offending vehicle - a bus bearing Reg.No.KL-11C-9039, dashed against the vehicle and hit the motor bike. He was thrown on to the road and had suffered serious multiple injuries and fractures. Immediately he was taken to the Medical College Hospital, Kozhikode, but he succumbed to the injuries after some time.

2. We heard the learned counsel for the appellant and the learned counsel for the Insurance Company. It is contended mainly that as against the monthly income claimed at Rs.4,000/-,

as he was working as a Salesman in a Jewellery shop, the Tribunal adopted only Rs.2,000/-as the monthly income. It is also submitted that the compensation awarded under different heads is also inadequate.

3. We have gone through the details of the discussion. It is seen that the 1st appellant and the employer of the deceased were examined as PWs 1 and 2. They have testified that the deceased was working as a Salesman in the Jewellery of PW2. The Tribunal did not accept Rs.4,000/- by pointing out that there is no documentary proof to show the monthly salary, but it is found that he was having a job at the time of his death. He was aged 22 years at the time of the accident and was working in Arafa Jewellery. We find from the discussion of the evidence that there is nothing to disbelieve the version of PWs 1 and 2 as regards the employment and the monthly income of the deceased. Further the amount claimed towards monthly income is not exorbitant and is only reasonable. The accident is of the year 2005. Therefore we accept Rs.4,000/- as the monthly income. He was aged 22 years at the time of the accident and therefore the multiplier will be 18. The multiplier adopted by the Tribunal is not the correct one, as it was taken with respect

to the age of the 1st claimant.

4. Since he was a bachelor, 50% of the amount will have to be deducted towards personal expenses. Apart from the same, it is seen that no amount has been awarded towards pain and suffering and only Rs.2,000/- has been awarded towards funeral expenses, Rs.1,000/- towards transportation and Rs.15,000/- for loss of love and affection and the total amount awarded by the Tribunal is Rs.2,02,000/-. We recompute the compensation in the light of the various aspects pointed out above as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of dependency(4000X12X18X1/2)	Rs.4,32,000.00
2	Funeral expenses	Rs. 25,000.00
3	Transportation charges	Rs. 2,000.00
4	Loss of love and affection	Rs.1,00,000.00
5	Loss of estate	Rs. 15,000.00
6	Pain and suffering	Rs. 10,000.00
	TOTAL	Rs.5,84,000.00

(Rupees Five lakhs eighty four thousand only)

The appellants will be entitled to a total compensation of Rs.5,84,000/- (Rupees Five lakhs eighty four thousand only), and the enhanced amount will carry interest @9% per annum from

the date of petition. The Insurance Company is given 3 months' time to deposit the amount.

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