

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 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

MACA.No. 1746 of 2008

**O.P.(M.V)NO.2129/2003 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,
PERUMBAVOOR**

APPELLANT(S)/(PETITIONERS 1 & 2 IN O.P.(MV): 2129/03 :

- 1. RAJAN, AGED 45 YEARS,
S/O. VELAYUDHAN, KAIPALATHIL HOUSE, NORTH EDAYAPURAM,
ALUVA EAST VILLAGE.**
- 2. RADHAMMA, AGED 43 YEARS,
W/O. RAJAN,DO.....**

**BY ADVS.SRI.V.K.GOPALAKRISHNA PILLAI
SRI.GOPAKUMAR G. (ALUVA)**

RESPONDENT(S) NO.3 IN O.P.(MV) 2129/2003 :

**UNITED INDIA INSURANCE CO. LTD.,
K.A.P.CENTRE, ALUVA.**

BY ADV. SRI.K.SANDESH RAJA

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

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

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M.A.C.A No.1746 of 2008
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Dated this the 23rd day of March, 2015

JUDGMENT

Ramachandran Nair, J

The appellants are the parents of deceased Miss. Sheena, who died in an accident, which occurred on 24.04.2002. She was travelling as a pillion rider in the motor cycle bearing registration No.KL-4B 9505. The accident occurred near Palarivattom in Cochin city. The offending vehicle is a bus bearing registration No.KL17-1159.

2. We are only called upon to consider the issue regarding the quantum of compensation, in this appeal. We heard the learned counsel on both sides.

3. The application is filed under Section 163A of the Motor Vehicles Act. The Tribunal calculated the yearly dependency at Rs.10,000/- and then arrived at the total compensation by taking 10 years amount and fixed it at Rs.1,00,000/- along with amount for

pain and suffering at Rs.5,000/- and accordingly, a total amount of Rs.1,05,000/- was arrived at.

4. Learned counsel for the appellant, Sri.G.Gopakumar, submitted that the application being one filed under Section 163A of the Motor Vehicles Act, the second schedule will prevail. Herein, the Tribunal did not arrive at a monthly remuneration by way of fixing a notional income. It is not clear from the award as to how the yearly dependency has been arrived at. Therefore, the learned counsel submitted that a proper fixation requires recognition of the future prospects of the deceased also. He relied upon the judgment of the Apex Court in **R.K.Mallik and another v Kiran Pal and others (2009 ACJ 1924)**, in this context. We have gone through paragraph 32 of the said judgment where the Apex Court has emphasised the importance to consider the future prospects of the children also. Therein a finding was rendered to the effect that going by the evidence in that case the deceased children were bright students. But as far as this case is concerned the school records are not in evidence. But, even then we will have to adopt a notional income properly.

5. Considering the age of the victim here, we will be justified in fixing Rs.2,000/- as the monthly income for fixing the quantum of compensation. Going by the second schedule, 1/3 will have to be deducted for personal expenses also. Therefore, the quantum of compensation going by the schedule will be Rs.4,80,000/- out of which 1/3 will have to be deducted. Therefore, the compensation for loss of dependency will be Rs.3,20,000/-. The Tribunal has already awarded Rs.5,000/- towards pain and suffering. No amount has been awarded for funeral expenses and loss of estate. Going by the note in second schedule, for funeral expenses, Rs.2,000/- has been provided and for loss of estate Rs.2500 has been provided. Accordingly, the total compensation will be **Rs.3,29,500/-**, which will carry interest at the rate of 9% per annum from the date of petition. We direct the insurance company to deposit the amount within a period of three months

and the Tribunal will release the amount to the appellants after realising the balance court fee, if any.

The appeal is allowed accordingly. The petitioners will suffer their costs in this appeal.

Sd/-
T.R.RAMACHANDRAN NAIR (JUDGE)

Sd/-
P.V.ASHA (JUDGE)

vdv