

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 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

MACA.No. 3358 of 2014 ()

(AGAINST THE AWARD OF THE ADDL.DISTRICT & SESSIONS COURT-
IV,ADDL.MOTOR ACCIDENTS CLAIMS TRIBUNAL-II, THODUPUZHA
IN O.P. (M.V.) NO.42/2013)

APPELLANT(S)/PETITIONERS:

1. SHAJAN MATHEW,
S/O MATHEW, KOCHUVEMBILLIL HOUSE, CHALIL KADAVU ROAD
KANJIRAMATTOM, THODUPUZHA.

2. ANNAKUTTY
W/O SHAJAN MATHEW, KOCHUVEMBILLIL HOUSE,
CHALIL KADAVU ROAD, KANJIRAMATTOM, THODUPUZHA.

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENT(S)/RESPONDENTS:

1. M.SARAVANAN,
S/O MURUKESHAN, 21/119, 3RD ST. NEELAGIRI
KALAIAGNAR NAGAR, THANJAVUR-609802.

2. U.UMAMAHESARI
W/O UDAYAKUMAR, 6-219, 2ND CROSS PONNAGAR
TRICHY-679105.

3. M/S. ORIENTAL INSURANCE CO. LTD. (CBO2 TRICHY)
73/B-1, SALAI ROAD, LAKSHMI COMPLEX
THILLAI NAGAR, THICHIRAPPALLI, TAMIL NADU-620018.

R3 BY ADV. SRI.A.R.GEORGE
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

MACA. No. 3358 OF 2014

Dated this the 10th day of February, 2015

JUDGMENT

Ramachandran Nair,J.

The point raised in the appeal is as to the calculation of notional income so far as the deceased is concerned. The accident occurred on 11/10/2012. While the deceased was walking through the side of the Cuddalore - Pondy main road, the offending vehicle- an Omni bus bearing Registration No. TN 45 AP 3033 knocked down the deceased. He sustained severe head injury and passed away. He was a student of the National Institute of Technology at Thiruchirapally. He had completed his B.Tech. Electrical and Electronics Engineering degree course in May 2012. The results were proposed to be declared during June 2012.

2. Before the Tribunal Ext.A11 was produced to show that the deceased was offered an employment with monthly scale of pay of Rs.12,000 to 38,000/- with incentives. While considering the evidence in the matter, the Tribunal has

noticed the fact that there is no evidence to show that the deceased had acquired the degree. The certificate relating to his B.Tech qualification has not been produced. Therefore, finally the Tribunal found that the deceased had not passed out the examination. By relying upon the decision of the Apex Court in **Mekala v. Malathi M. and Another (2014 (2) KHC SN 56 (SC))**, wherein the Apex Court has taken the notional income of a student studying in the 11th standard as Rs.10,000/-, the Tribunal adopted an equal amount as the notional income of the deceased in this case. Argument advanced by the learned counsel for the appellants is that at least Rs.15,000/- should have been adopted as notional income.

3. Learned counsel for the Insurance Company submitted that in this case the deceased has not successfully passed B.Tech.degree course and hence there is no scope for enhancing the compensation.

4. Evidently, the deceased was a student only, and was unmarried. But, an amount of Rs.1,00,000/- has been awarded by the Tribunal towards loss of consortium. We notice that towards loss of consortium, the Tribunal has awarded Rs.

1,00,000/- and Rs.1,00,000/- is awarded towards loss of love and affection taking note of the fact that the deceased had left widow, three children and aged mother, which is not the correct situation. The amount of Rs. 1,00,000/- granted towards loss of consortium is deleted and the other one is retained as loss of love and affection of the appellants.

5. Having considered the fact that he was a student of an Engineering College, viz. National Institute of Technology, Thiruchirapally and in the light of the judgment of the Apex Court in *Mekala v. Malathina* (cited supra), we find that it is reasonable to adopt Rs.12,000/- as notional income for fixing the compensation. Therefore, the amount of compensation towards loss of dependency will come to **Rs.12,96,000/-**. The Tribunal has granted Rs.30,000/- towards transportation expenses, Rs.1,00,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. No amount has been awarded towards pain and sufferings. We award **Rs.10,000/-** towards pain and suffering. Accordingly, we modify the award of the Tribunal as per the table given below:

<i>SL No.</i>	<i>Head of claim</i>	<i>Amount claimed (in Rupees)</i>	<i>Amount awarded (in Rupees)</i>	<i>Basis-vital details in a nut shell</i>
1	Transportation expenses	80,000/-	30,000/-	(Bills for produced)
2	Damage to clothing etc.	500/-	500/-	
3	Loss of dependency		12,96,000/-	(12000x12x1/2x18)
4	Loss of love and affection	2,00,000/-	1,00,000/-	
5	Loss of estate		10000/-	
6	Funeral Expenses		25000/-	
7	Pain and Sufferings		10,000/-	
	Total	Claim limited to 30,00,000/-	14,71,500/-	

The compensation will carry interest at the rate of 9% from the date of the petition as already ordered by the Tribunal.

The appeal stands allowed as above. The parties will bear their costs in this appeal.

Sd/-

**T.R.RAMACHANDRAN NAIR,
Judge.**

Sd/-

**P.V.ASHA,
Judge.**

dpk

/true copy/ PS to Judge.

