

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 3RD DAY OF MARCH 2023 / 12TH PHALGUNA, 1944

MACA NO. 532 OF 2021

AGAINST THE AWARD DATED 22.11.2019 IN OPMV 296/2018 OF
ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL, KASARAGODE

APPELLANTS/CLAIMANTS:

- 1 NAFEESA
 AGED 48 YEARS
 W/O. LATE ABOOBACKER, RESIDING AT PARAPPA
 HOUSE, KUDALMERKALA (PO), MANGALPADY (VIA),
 MANJESHWAR TALUK, KASARAGOD DISTRICT.
 - 2 SIRAJUDDEEN,
 AGED 23 YEARS
 S/O. LATE ABOOBACKER, RESIDING AT PARAPPA
 HOUSE, KUDALMERKALA (PO), MANGALPADY (VIA),
 MANJESHWAR TALUK, KASARAGOD DISTRICT.
 - 3 AYSHATH ASIFA,
 AGED 16 YEARS
 D/O. LATE ABOOBACKER, RESIDING AT PARAPPA
 HOUSE, KUDALMERKALA (PO), MANGALPADY (VIA),
 MANJESHWAR TALUK, KASARAGOD DISTRICT. (SINCE
 THE 3RD APPELLANT IS A MINOR, SHE IS
 REPRESENTED BY HER NEXT FRIEND GUARDIAN, HER
 MOTHER THE 1ST APPELLANT SMT. NAFEESA)
- BY ADVS.
 JAWAHAR JOSE
 SMT.CISSY MATHEWS

RESPONDENTS/RESPONDENTS:

- 1 M.MOSES SELVA RAJ
 AGED 50 YEARS
 S/O. MUTHIYAN, RESIDING AT MODEAN VILAI,
 KARAVILAI, NELLOOR, MARTHANDAM, VILLUKURI (PO),
 KANYAKUMARI DISTRICT, TAMIL NADU, PIN 629 180
- 2 SAMUVEL B.V,
 S/O. BERNABAS, RESIDING AT B.V HOUSE,
 VARAVUPOTTA, UDIYANKULANGARA, CHENKAL (PO),
 PARASSALA (VIA), TRIVANDRUM DISTRICT, PIN 695

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3 THE MANAGER,
CHOLA M.S GENERAL INSURANCE COMPANY LIMITED,
1ST FLOOR, SARAN CHAMBERS, VELLAYAMBALAM,
TRIVANDRUM, PIN 695 010

BY ADVS.
jacob mathew p
MATHEWS JACOB (SR.) (M-186)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 03.03.2023, ALONG WITH MACA.765/2020,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 3RD DAY OF MARCH 2023 / 12TH PHALGUNA, 1944

MACA NO. 765 OF 2020

AGAINST THE AWARD DATED 22.11.2019 IN OPMV 297/2018 OF

ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL-II,

KASARAGODE

APPELLANTS/CLAIMANTS:

- 1 ASYAMMA
AGED 47 YEARS
W/O.ABDULLA, RESIDING AT PARAPPA HOUSE,
KUDALMERKALA (P.O), MANGALPADY (VIA),
MANJESHWAR TALUK, KASARAGOD DISTRICT.
 - 2 ABDULLA
AGED 52 YEARS
S/O.MUHAMMED, RESIDING AT PARAPPA HOUSE,
KUDALMERKALA (P.O), MANGALPADY (VIA),
MANJESHWAR TALUK, KASARAGOD DISTRICT.
- BY ADVS.
JAWAHAR JOSE
SMT.CISSY MATHEWS
SRI.JAISON ANTONY

RESPONDENTS/RESPONDENTS:

- 1 M.MOSES SELVA RAJ,
AGED 50 YEARS, S/O.MUTHIYAN, RESIDING AT MODEAN
VILAI, KARAVILAI, NELLOOR, MARTHANDAM,
VILLUKURI (P.O), KANYAKUMAR DISTRICT, TAMIL
NADU, PIN-629180.
- 2 SAMUVEL.B.V.,
S/O.BERNABAS, RRESIDING AT B.V.HOUSE,
VARAVUPOTTA, UDIYANKULANGARA, CHENKAL (PO),
PARASSALA (VIA), TRIVANDRUM DISTRICT, PIN-
695132.
- 3 THE MANAGER,
CHOLA M.S. GENERAL INSURANCE COMPANY LIMITED,
1ST FLOOR, SARAN CHAMBERS, VELLAYAMBALAM,

MACA NOS. 765 OF 2020 AND 532 OF 2021

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TRIVANDRUM, PIN-695010.

BY ADVS.

SRI.MATHEWS JACOB (SR.)

SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 03.03.2023, ALONG WITH MACA.532/2021,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

I am considering these appeals together and disposing them of through this judgment, since they emanate from the same road accident, in which two different persons were killed.

2. On 10.12.2013, while Late Mohammed Irshad was riding his motor cycle, were Late Mohammed Raisheed as the pillion, it was hit by the offending vehicle driven in a rash and negligent manner, leading to the unfortunate death of both young men. The deceased were mere aged 21 and 20 respectively at the time of the accident; and their legal heirs filed O.P(MV) Nos. 296/2018 and 297/2018 respectively, before the Additional Motor Accidents Claims Tribunal-II, Kasaragode ('Tribunal' for short). Both the Original Petitions were allowed by the Tribunal, but not to the extent prayed for and the appellants have assailed the Awards on that ground.

3. MACA No.532/2021 has been filed by the legal heirs of Mohammed Irshad; while MACA No.765/2020 has been filed by the legal heirs of Mohammed Raisheed.

4. Sri.Safeer Bava – learned counsel for the appellants in both cases, submitted that even though it is the specific contention of the legal heirs of the deceased, that Late Mohammed Irshad was running a business, in which Mohammed Raisheed was also

involved; and that they were earning Rs.30,000/- per head at the time of the accident, the learned Tribunal fixed their notional income as being a mere Rs.6,084/- and added 40% as 'Future Prospects, thus awarding Rs.9,90,944/- only in both cases, under the head 'Loss of Dependency'. He then pointed out that the learned Tribunal then awarded Rs.15,000/- each under the head 'Funeral Expenses' and compensation for 'Loss of Estate'; along with 'Loss of Filial Consortium' of Rs.40,000/- to the mother of Mohammed Irshad and to both the claimants in MACA No. 765/2020 - the parents of Mohammed Raisheed. He argued that the afore amounts are inadequate.

5. In response, Sri.Mathew P.Jacob – learned counsel for the Insurance Company, argued that the compensation awarded by the learned Tribunal under the head 'Loss of Dependency' is just and fair because, the income of the deceased has not been proved through any cogent or reliable evidence. He, however, contended that the learned Tribunal has erred in granting compensation under the head 'Loss of Love and Affection' and in computing the personal expenses of the deceased.

6. I must say that I cannot find favour with the submission of the Insurance Company on the issue of the notional income because, when the actual income of the deceased cannot be ascertained, or has not been able to be proved, then the

learned Tribunal ought to have gone with the judgment of the Honourable Supreme Court in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. : [(2011) 13 SCC 236]**, which postulates that, even in the case of a person with unascertainable income in the year 2013 – being the year of accident – an amount of Rs.9,000/- ought to have been reckoned. To this, certainly, 40% 'Future Prospects' also require to be added, as per the judgment in **National Insurance Company Ltd. v. Pranay Sethi [2017(4) KLT 6621]**. I fail to understand why the Tribunal did not do so.

7. That said, an additional question arises as to what is the amount which ought to have been deducted as 'Personal Expenses' of the deceased young men. Though, in the case of appellants in MACA No. 765/2020 - who are the mother and father of the deceased Mohammed Raisheed, I am of the view that the Tribunal correctly reduced one-half as personal expenses of the deceased, guided by the judgment of the Honourable Supreme Court in **Pranay Sethi** (supra); the deduction of the said fraction from the claim made by the appellants in MACA No.532/2021 does not appear to be correct. This is because Late Mohammed Irshad is survived by

his widowed mother, along with his sister and brother, who were both minors at the time of this accident, and hence the ratio of the Honourable Supreme Court in **Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram [(2018) 18 SCC 130]** would come to play. In this judgment, the Honourable Supreme Court declared that if it is established that the claimants are all dependents, then the percentile of deduction will also have to follow that which is postulated in **Sarla Verma v. Delhi Transport Corporation [2010(2) KLT 802]**. In this case, it is doubtless that the deceased left behind a widowed mother, without income and that his siblings were a mere 9 and 17 years at the time of the accident. I am, therefore, of the firm view that deduction of one-third alone can be made in the case of Late Mohammed Irshad.

8. That being so said, I cannot find the compensation awarded by the Tribunal under other heads to be necessary of being intervened with, because they are just and fair. However, there is force in the submission of Sri.P.Jacob Mathew that no amount could have been granted under the head 'Love and Affection', because it has been so declared in **United India Insurance Co.Ltd v. Satinder Kaur @**

Satwinder Kaur [2020 (3) KHC 760] when compensation for 'Loss of Dependency' is granted.

Resultantly:

A) **MACA No.765/2020**

(a) This appeal is allowed, granting an amount of Rs.13,60,800/- under the head 'Loss of Dependency', reckoning the notional income of the deceased to Rs.9,000/- per month, with 40% 'Future Prospects' added to it and deducting one-half towards his personal expenses.

(b) In all other heads, the compensation awarded by the Tribunal remains unaltered.

(c) Needless to say, the appellants will be at full liberty to recover the compensation, as enhanced by this Court, from the Insurance Company, along with interest at the rate of 8% reducing the rate of interest of 9%, as awarded by the Tribunal in view of the escalation granted by this Court, from the date of claim until it is recovered. They will also be entitled to proportionate cost on the enhanced amount as ordered by the Tribunal before it.

B) **MACA No.532/2021**

(a). This appeal is allowed, enhancing the compensation under the head 'Loss of Disability' to be Rs.18,14,400/-, reckoning

the notional income of the deceased to Rs.9,000/- per month, adding 40% Future Prospects to it, and deducting one-third towards personal expenses.

(b) The compensation granted by the Tribunal under the head 'Love and Affection' is deleted.

(c) In all other heads, the compensation awarded by the Tribunal will remain unaltered.

(d) Needless to say, the appellants will be at full liberty to recover the compensation, as enhanced by this Court, from the Insurance Company, along with interest at the rate of 8% reducing the rate of interest of 9%, as awarded by the Tribunal in view of the escalation granted by this Court, from the date of claim until it is recovered. They will also be entitled to proportionate cost on the enhanced amount as ordered by the Tribunal before it.

**Sd/-DEVAN RAMACHANDRAN,
JUDGE**

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