

Mumthas vs Mohammed Rafi

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Court : Kerala

Decided On : Jan-16-2025

Judge : Honourable Mr. Justice Johnson John

Appeal No. : MACA/1673/2019

Appellant : Mumthas

Respondent : Mohammed Rafi

Judgement :

M.A.C.A. No. 1673/2019 :1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE JOHNSON JOHN
THURSDAY, THE 16TH DAY OF JANUARY 2025 / 26TH POUSHA,
1946 MACA NO. 1673 OF 2019 AGAINST THE AWARD DATED
14.06.2012 IN O.P(MV) NO.822 OF 2009 OF MOTOR ACCIDENT
CLAIMS TRIBUNAL, KOLLAM APPELLANTS/PETITIONERS:

1 MUMTHAS, AGED 35 YEARS D/O RAFEEKA BEEVI, MUMTHAS
MANZIL, VALATHUNGAL P.O., ERAVIPURAM VILLAGE, KOLLAM
DISTRICT. 2 NAISHANA SHA, AGED 11 YEARS, D/O. MUMTHAS

NADHIRSHA, MUMTHAS MANZIL, VALATHUNGAL P.O., ERAVIPURAM VILLAGE, KOLLAM DISTRICT. 3 NINA SHA, AGED 10 YEARS, D/O. MUMTHAS NADHIRSHA, MUMTHAS MANZIL, VALATHUNGAL P.O., ERAVIPURAM VILLAGE, KOLLAM DISTRICT. [MINOR APPELLANTS 2 AND 3 ARE REPRESENTED BY IST APPELLANT, MOTHER AS GUARDIAN OF THE MINORS]

BY ADVS. R.RAJESH (VARKALA) SRI.M.KIRANLAL SRI.MANU RAMACHANDRAN SRI.T.S.SARATH SRI.K.P.JABBAR RESPONDENTS/RESPONDENTS 1 TO 5 & PETITIONER 1, 2 & 4: 1 MOHAMMED RAFI, S/O JALALUDHEEN, KOCHUKADA VADAKKATHIL, POROORKARA, EDAPPALLYCOTTA P.O., PANMANA VILLAGE, KARUNAGAPPALLY, KOLLAM DISTRICT-691 583. 2 RENJU R., S/O. RAJASEKARAN NAIR, VRINDAVAN, MEKKUMURI, THANEERKULAM, ALAPPUZHA DISTRICT. M.A.C.A. No. 1673/2019 :2: 3 THE MANAGER, THE ORIENTAL INSURANCE CO. LTD., THODUPUZHA, KERALA-685 584. BY ADVS. R1 & R2 BY SRI.V.MADHUSUDHANAN R3 BY SRI.S.K.AJAY KUMAR THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 15.01.2025, THE COURT ON 16.01.2025 DELIVERED THE FOLLOWING: M.A.C.A. No. 1673/2019 :3:

JOHNSON JOHN, J.

----- M.A.C.A No. 1673 of 2019
----- Dated this the 16th day of
January, 2025.

JUDGMENT

The appellants are the petitioners in O.P.(MV) No. 822 of 2009 on the file of the Motor Accident Claims Tribunal, Kollam and they are challenging the quantum of compensation awarded by the Tribunal under various heads as inadequate.

2. The appellants are the legal heirs of the deceased Nadirshaw,

who died in a motor vehicle accident occurred on 11.06.2009. According to the appellants, on the date of occurrence, while the deceased was travelling as a passenger in a scorpio car driven by the 2 nd respondent in a rash and negligent manner, it caused to hit on electric post and thereby, the deceased sustained serious injuries and subsequently, succumbed to his injuries on the same day.

3. Before the Tribunal, PW1 examined and Exhibits A1 to A6 were marked from the side of the petitioners and no evidence adduced from the side of the respondents. M.A.C.A. No. 1673/2019 :4:

4. After trial and hearing both sides, the Tribunal found that the accident occurred because of the negligence on the part of the 2 nd respondent and that respondents 1 to 3 are jointly and severally liable to pay compensation. The Tribunal awarded a total compensation of Rs.8,60,000/- to the claim petitioners.

5. Heard both sides and perused the records.

6. The learned counsel for the appellants argued that the Tribunal

fixed only a notional income of Rs.6000/- and the same is on the lower side. It is argued that the deceased was working as salesman in Oman and earning 225 omani rial per month at the time of the accident and the Tribunal has not properly appreciated the evidence of PW1 and Exhibit A6 in this regard.

7. But, the learned counsel for the insurance company pointed out

that in cross examination, PW1 admitted that Exhibit A6 is only a photocopy and that no document is available to show that the deceased was working abroad at the time of the accident. PW1 further admitted that the copies of passport and visa of the deceased are not produced. M.A.C.A. No. 1673/2019 :5:

The evidence of PW1 in cross examination shows that she has no direct knowledge regarding the occupation and income of the deceased and in that circumstance, I find no reason to interfere with the finding of the Tribunal that the evidence of PW1 and Exhibit A6 cannot be relied upon to record a finding regarding the income of the deceased.

8. The decision of the Hon'ble Supreme Court in

Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd. [(2011) 13 SCC 236] and Syed Sadiq and Others v. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735 = 2014 KHC 4027] shows that even in the absence of any evidence, the monthly income of an ordinary worker has to be fixed as Rs.4,500/- in respect of the accident occurred in the year 2004 and for the subsequent years, the monthly income could be reckoned by adding Rs.500/- each per year. If the monthly income of the deceased is calculated by adopting the above principle, it will come to Rs.7,000/- as the accident occurred in the year 2009. Therefore, I find that the monthly income of the deceased at the time of the accident can be fixed as Rs.7,000/- for assessing the compensation.

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9. The decision of the Hon'ble Supreme Court in National

Insurance Co.Ltd. v Pranay Sethi [(2017) 16 SCC 680] and Jagdish v. Mohan [(2018) 4 SCC 571] shows that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals and in case of a self-employed person, an addition of 40% of the established income should be made where the age of the victim at the time of the accident was below 40 years.

10. The Tribunal accepted 17 as the multiplier and deducted one-

third of the income towards personal and living expenses of the deceased. The learned counsel for the appellants pointed out that claim petitioners 1 to 3 are the wife and children of the deceased and the 5 th petitioner is the mother of the deceased and therefore, they are dependants and the finding of the Tribunal that the mother of the deceased cannot be treated as a dependant is not sustainable. It is argued that the mother of the deceased is unemployed and was depending on the deceased.

11. The decision of the Honourable Supreme Court in Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)] M.A.C.A. No. 1673/2019 :7:

shows that the deduction towards personal and living expenses should be one-fourth, where the dependent family members are 4 to 6 and therefore, I find that in this case, only one-fourth is to be deducted towards personal and living expenses of the deceased. Thus, while reassessing the compensation for loss of dependency as per the revised criteria, the amount would come to Rs.14,99,400/- [7000 + 40%) x x 12 x 17].

12. The decision of the Hon'ble Supreme Court in Pranay Sethi (Supra) would show that the reasonable amount payable on conventional heads namely loss of estate, loss of consortium and funeral

expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively and that the aforesaid amount should be enhanced by 10% in every three years. The Hon'ble Supreme Court in Rojalini Nayak & Ors v. Ajit Sahoo (2024 KHC Online 8300) by adopting the above metric awarded a compensation of Rs.48,400/- towards loss of consortium and Rs.18,150/- each towards funeral expenses and loss of estate. Therefore, the amount awarded by the Tribunal towards funeral expenses and loss of estate will be modified to Rs.18,150/- each and the M.A.C.A. No. 1673/2019 :8:

petitioners will also be entitled for Rs.48,400/- towards loss of consortium. The decision of the Hon'ble Supreme Court in Shriram General Ins.Co.Ltd. v. Bhagat Singh Rawat (2023 KHC Online 7244) shows that the compensation under the heads of loss of love and affection and loss of consortium cannot be granted to each legal representative of the deceased and in view of the said position, the petitioners are not entitled for a separate amount towards loss of love and affection.

13. The learned counsel for the appellants pointed out that the Tribunal has not awarded any compensation towards pain and

sufferings. and that the provisions of the Kerala Torts (Miscellaneous Provisions) Act, 1976 would show that the right to sue for compensation for pain and suffering would survive upon the legal heirs, if the injured died at a later point of time and in this case, even though the death occurred on the same day, it was at a later point

of time and therefore, considering the facts and circumstances, I find that a sum of Rs.10,000/- can be allowed to the petitioners towards pain and

sufferings of the deceased. 14. In conclusion, the enhanced amount of compensation, as modified as a result of the above discussion is encapsulated, in a tabular format herein below: M.A.C.A. No. 1673/2019 :9:

Sl.	Compensation Particulars awarded by the Tribunal (Rs.)	Payable	Final Particulars	Amount	No
1	Loss of dependency	8,16,000/-	14,99,400/-	Loss of estate	2
2	4,000/-	18,150/-	Funeral expenses	3	10,000/-
3	10,000/-	18,150/-	48,400/-	4	Loss of consortium
4	10,000/-	Love and affection	5	10,000/-	NIL
5	Pain and sufferings	6	NIL	10,000/-	Medical and Miscellaneous
6	7,000/-	7	7,000/-	expenses	8
7	10,000/-	10,000/-	8,67,000	(mistakenly shown as Total amount Payable	16,11,100/-
8	Rs.8,60,000/-	in the award of the Tribunal)			

15. Accordingly, the total amount of compensation payable to the

petitioners is determined as Rs.16,11,100/-. In the result, this appeal is allowed, and the appellants/petitioners are allowed to recover the compensation amount of Rs.16,11,100/- (Rupees Sixteen Lakhs Eleven Thousand and One Hundred only) with M.A.C.A. No. 1673/2019 : 10 :

interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization with proportionate costs from the respondents. The third respondent insurance company shall deposit the said amount together with interest and costs before the Tribunal within a period of three months from the date of receipt of a certified copy of this

judgment.

sd/- JOHNSON JOHN, JUDGE. Rv The judgment in M.A.C.A No. 1673 of 2019 dated 16.01.2025 is corrected by incorporating the sentence that the appellants are not entitled for interest on the enhanced amount for the period covered by the delay, as per order dated 07.03.2025 in I.A. No. 1/2025 in M.A.CA. No. 1673 of

2019. sd/- Deputy Registrar

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