

Ammmed and Others vs Jayakumar

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Court : Kerala

Decided On : Mar-10-2023

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : MACA/2838/2009

Appellant : Ammed and Others

Respondent : Jayakumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN
FRIDAY, THE 10TH DAY OF MARCH 2023 / 19TH PHALGUNA, 1944
MACA NO. 2838 OF 2009 OP(MV) 360/2003 OF MOTOR ACCIDENTS
CLAIMS TRIBUNAL, KALPETTA APPELLANTS/PETITIONERS:

1 AMMED, AGED 63 YEARS,S/O.ABDULLA,KANIYANKANDY HOUSE,
THARUVANA P.O.,(FATHER OF THE DECEASED) 2 AMINA AGED 54
YEARS,W/O.AMMED,KANIYANKANDY HOUSE, THARUVANA
P.O.,(MOTHER OF THE DECEASED) 3 RASHEED AGED 34
YEARS,S/O.AMMED,KANIYANKANDY HOUSE, THARUVANA
P.O.(BROTHER OF THE DECEASED) 4 SABIRA AGED 32

YEARS,D/O.AMMED, W/O.IBRAHIM, VALLIYATH
HOUSE,ANJAMPEEDIKA, VALERI POST,(SISTER OF THE
DECEASED). 5 ABDULLA AGED 24
YEARS,S/O.AMMED,KANIYANKANDY HOUSE, THARUVANA
P.O.,(BROTHER OF THE DECEASED)(DIED) 6 ASHIQUE AGED 21
YEARS,S/O.AMMED,KANIYANKANDY HOUSE, THARUVANA
P.O.,(BROTHER OF THE DECEASED)

BY ADV SRI.N.J.ANTONY RESPONDENTS/RESPONDENTS: 1
AJAYAKUMAR, AGED 36 YEARS, S/O.K.V.RAVI, KUNNUMPURATH
HOUSE, PALVELICHEM,PAYYAMPALLY. (DRIVER OF THE BUS
No.KL-12A/9504.D.L.No.NOT KNOWN) 2 A.E.PHILOPOSE AGE AND
FATHERS NAME NOT KNOWN, INCHIKALAYIL HOUSE, NADAVAYAL
POST, WAYANAD DISTRICT. (OWNER OF THE BUS No.KL-12A/9504)
M.A.C.A.No.2838 of 2009 ..2.. 3 NEW INDIA ASSURANCE COMPANY
LTD. KALPETTA.(POLICY No.760604/31/03/01834, INSURER OF
BOTH VEHICLES) 4 C.H.NAVAS AGED 28 YEARS, S/O.MOIDUTTY,
CHATHOTH HOUSE, THARUVANA POST,7th MILE,
MANANTHAVADY. (RIDER OF THE MOTOR CYCLE NO.KL-12A/3558)
5 ABDULLA, AGE NOT KNOWN, S/O.AMMED, KOITHIKANDY HOUSE,
KANIYAMPATTA POST. (OWNER OF THE MOTOR CYCLE NO.KL-
12A/3558) BY ADV SRI.P.K.BABU THIS MOTOR ACCIDENT CLAIMS
APPEAL HAVING COME UP FOR ADMISSION ON 10.03.2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
M.A.C.A.No.2838 of 2009 ..3..

C.JAYACHANDRAN, J.

----- M.A.C.A.No.2838 of 2009
----- Dated this the 10th day of March, 2023

JUDGMENT

This appeal is carried by the legal heirs of the deceased who succumbed to the injuries caused in a motor accident, which took place on 22.6.2003. The deceased was 24 years old and a driver by profession at the time of accident. The appellants impugn the award of the Motor Accidents Claims Tribunal, Kalpetta in O.P.(M.V.)No.360/2003. The appeal is essentially focused on enhancing the compensation amount granted by the Tribunal.

2. Heard Sri.N.J.Antony, learned counsel for the appellants and Sri.P.K.Babu, learned counsel on behalf of the 3rd respondent/insurance company. Perused the records.

3. The first point canvassed by the learned counsel for the

appellants is with respect to the monthly income of the deceased. A sum of Rs.6,000/- was claimed, whereas the Tribunal reckoned only Rs.2,100/-. In the absence of any M.A.C.A.No.2838 of 2009 ..4.. proof adduced, the income can be reckoned only based on the index available in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236] which stipulates a monthly income of Rs.4,000/- for the year 2003. It is so reckoned. The multiplier reckoned by the Tribunal is '17', as against the correct multiplier of '18'. This Court therefore reckons the multiplier as '18'. 'Future prospects' in terms of the judgment of the Hon'ble Supreme Court in National Insurance Company Ltd. v. Pranay Sethi [2017 (4) KLT 662 (SC)] was not reckoned. The deceased being aged only 24 years is entitled to 40% of his income to be reckoned towards 'future prospects'. It is so ordered. Similarly 1/4th of the income is liable to be deducted for personal expenses having regard to the fact that family of the deceased consists of 6 members. Under the head 'funeral expenses' the Tribunal granted only Rs.3,000/-. There also, going by Pranay Sethi (supra) the claimants are entitled to Rs.15,000/-. The same is the situation for compensation under the head 'loss of estate', where the claimants are M.A.C.A.No.2838 of 2009 ..5.. entitled to Rs.15,000/-. No amount has been granted towards 'consortium'. Instead a sum of Rs.40,000/- is granted as loss on account of love and affection. Going by Pranay Sethi (supra) the father and mother of the deceased are entitled to Rs.40,000/- each, towards 'consortium'. Simultaneous with the same, the amount of

Rs.40,000/- granted under the head loss of love and affection has to be obliterated. It is clarified that the amounts under the heads 'funeral expenses', 'loss of estate' and 'consortium' will carry enhancement at the rate of 10% on every three years going by Pranay Sethi (supra). Finally, this Court grants a sum of Rs.1,000/- towards 'damage to clothes' and enhances the 'transportation expenses' from Rs.1,000/- to Rs.2,000/- since the deceased was carried from Mananthavady, the place of accident to the Medical College Hospital, Calicut where he breathed his last.

4. In the result, this M.A.C.A. is allowed and the compensation amount payable to the appellants/claimants is re-worked as indicated in the tabular statement herein below:- M.A.C.A.No.2838 of 2009 ..6.. Amount Total amount after Sl. awarded by the enhancement in Head of Claim No. Tribunal appeal (Rs.) (Rs.)

1 Transport to hospital	1,000	2,000	2 Funeral expenses	3,000	16,500	3
Love and affection	40,000	Nil	4 Dependency	2,85,600	*9,07,200	5
Loss of estate --	16,500		6 Consortium --	88,000		
7 Damage to clothes -	1,000					
Total	3,29,600	10,31,200	Amount enhanced =	Rs.7,01,600/-	(Rupees Seven lakhs one thousand and six hundred only)	*(4000x40/100)x12x18- =Rs.9,07,200/-)

5. The Insurance Company shall pay interest for the

amounts awarded by the Tribunal at the rate directed in the impugned award and for the enhanced amount, at the rate of 7% from the date of petition. If any amount has already been paid, the same shall be granted set off. Since there was a delay of 266 days in filing the appeal, the interest for the enhanced quantum shall not run for the said period, as directed in order dated 17.08.2022 in C.M.Appln.No.1/2009 in M.A.C.A.No.2838/2009. The claimant shall produce the details of the Bank account before the Insurance Company/Tribunal M.A.C.A.No.2838 of 2009 ..7.. within two months from the date of receipt of a certified copy of this judgment and amount shall be transferred to the Bank account directly through NEFT/RTGS mode, within a period of one month thereafter. If the Bank account is not given within the time stipulated, it is made

clear that, no interest shall run on the enhanced amount after the period stipulated by this Court. However, if the Insurance Company fails to deposit the amount, as directed, interest on the enhanced amount shall also run at the rate ordered by the Tribunal from the date of petition. The appeal is allowed to the above extent. Sd/-
C.JAYACHANDRAN, JUDGE skj

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