

**T. Varghese and ors. Vs. Kerala State Road Trans. Corpn. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/726606](http://sooperkanoon.com/726606)

**Court :** Kerala

**Decided On :** May-29-1990

**Reported in :** 1991ACJ29

**Judge :** Varghese Kalliath and; T.V. Ramakrishnan, JJ.

**Appeal No. :** M.F.A. No. 342 of 1985

**Appellant :** T. Varghese and ors.

**Respondent :** Kerala State Road Trans. Corpn. and ors.

**Advocate for Def. :** M.P. Govindan Nair, Adv.

**Advocate for Pet/Ap. :** S. James Vincent, Adv.

**Judgement :**

Varghese Kalliath, J.

1. One Suresh Wilfred, an 18 years old college student met with an accident. It was a fatal accident. He succumbed to the injuries. It happened on 6.3.1982.

2. Suresh Wilfred was a passenger in the K.S.R.T.C. bus. It is stated that the driver was driving the vehicle rashly and negligently and a sudden swerve to left and right caused a shocking jerk and the deceased, who was standing near the footboard, was thrown out. His head hit against a telephone post causing skull and brain injuries. He was taken to the hospital and there he breathed his last.

3. The claimants are the legal heirs of the deceased. The claimants wanted a compensation of Rs. 1,00,000/- under different heads. Evidence was adduced in the case. The Tribunal, after considering the evidence in the case, found that the claimants are entitled to a compensation of Rs. 42,000/-. Of course, the Tribunal found the total loss of dependency at Rs. 50,400/-. After deducting a sum of Rs. 8,400/- for imponderables and lump sum payment, the Tribunal fixed the compensation payable for loss of dependency benefit at Rs. 42,000/-. Over and above this amount, the Tribunal awarded a compensation of Rs. 10,000/- for mental shock and mental agony of the claimants and the pain and suffering of the deceased. An amount of Rs. 1,000/- was awarded for funeral expenses. Thus the claimants are entitled to a total compensation of Rs. 53,000/-. The Tribunal awarded 6 per cent interest from the date of application till realisation of the amount.

4. The claimants are not satisfied with the compensation awarded by the Tribunal. They appeal. Counsel for the appellants submitted before us that the compensation for pecuniary loss calculated on the basis of fixing Rs. 300/- as the monthly average loss is unjustifiable in the circumstances of the case. It was contended that the deceased was a B.Com. student and naturally he had very great prospects in life. He could have earned larger amounts and the real pecuniary loss though cannot be determined accurately, the court is bound to make a reasonable and justifiable estimate and the estimate made by the Tribunal in the circumstances of the

case is not reasonable and satisfactory. Counsel submitted that when there is no clear evidence to determine a fixed amount as the earning capacity of the deceased and it has to be determined on various circumstances as a prospective expectation of the earning capacity, there is no justification for deducting a substantial amount for imponderables. Counsel also submitted that the interest awarded by the Tribunal at the rate of 6 per cent per annum is inadequate and unreasonable. Counsel further submitted that in a case where claim of compensation is made on account of the death of a person by his legal representatives, loss of expectancy of life of the deceased has to be determined pecuniarily, so that, that amount also has to be added to the estate of the deceased. We have to examine the above ground urged before us by counsel for the appellants very ably and briefly.

5. In regard to the question of interest, we have no hesitation to hold that 6 per cent interest is inadequate. We hold that the claimants are entitled to 12 per cent interest on the amount awarded from the date of application till realisation of the amount. Though counsel submitted that the estimate made by the Tribunal in regard to the earning capacity, viz., Rs. 300/- per month is inadequate, we are not in a position to interfere with that finding, because there is no tangible evidence for us to interfere with the finding of the Tribunal.

6. When the earning capacity of the deceased is determined not on the basis of the actual earning capacity, but on the basis of his prospective earning capacity, it may not be quite proper to have a further deduction for imponderables. In this case, the Tribunal has deducted Rs. 8,400/- for 'imponderables and lump sum payment'. What is the exact amount the Tribunal has deducted for imponderables cannot be ascertained from the judgment. Since we hold that the circumstances do not warrant the deduction for imponderables, we have to exclude that amount in the matter of determining the compensation payable to the claimants, of course, we have to do it with a little arbitrariness. We feel that for imponderables the Judge might have deducted an amount of Rs. 5,000/-, which is not a justifiable deduction in the circumstances of the case. So an amount of Rs. 5,000/- has to be added to the compensation payable to the claimants. In regard to the deduction made for the lump sum payment, we do not think that there is any justification for us to disagree with the finding of the Tribunal.

7. The only remaining question that has to be considered is regarding the conventional amount that can be granted for the loss of expectancy of life of the deceased himself. The deceased was aged 18 at the time of his death. Normal expectancy of life can be considered as 70 years, since there are decisions to that effect. So in this case, there is great loss of expectation of life of the deceased. It is difficult to assess the money value for loss of expectation of life.

8. In *Lim Poh Choo v. Camden and Islington Area Health Authority* 1980 ACJ 486 (HL, England), Lord Scarman said:

An award for pain, suffering and loss of amenities is conventional in the sense that there is no pecuniary guideline which can point the way to a correct assessment. It is, therefore, dependent only in the most general way on the movement in money values... As long, therefore, as the sum awarded is a substantial sum in the context of current money values, the requirement of the law is met.

In *K.S.R.T.C. v. Padmanabhan Nair* 1990 (1) KLJ 489, a Division Bench of this court has awarded referring to an earlier decision of this court in *P. Pappammal v. International Space Research Organisation* 1986 ACJ 812 (Kerala), an amount of Rs. 5,000/- as a customary figure for loss to the estate of the deceased for loss of expectation of life. In this case also, the claimants are entitled to an amount of Rs. 5,000/- for 'loss of expectation of life' of the deceased.

9. In the result, we have to modify the award and fix a total compensation of Rs. 63,000/-. The claimants are entitled to 12 per cent interest on the said amount of Rs. 63,000/- from the date of application till realisation.

Appeal is disposed of as above.

