IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

MACA.No. 302 of 2005 ( )

AGAINST THE AWARD IN OPMV 1683/1996 of M.A.C.T.,KOLLAM DATED 12-08-2003

APPELLANT(S)/APPELLANTS:

1. VISWANATHAN, ATTIKKAL,
VETTUTHARA, NEENDAKARA, KOLLAM.

2. RADHAMMA, ATTIKKAL,
VETTUTHARA, NEENDAKARA, KOLLAM.

3. SANDHYA, ATTIKKAL,
VETTUTHARA, NEENDAKARA, KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS:

1. R.RAJAN, KRISHNA MANDIRAM,
PALLIMON, KOLLAM.

2. JAMES, CHARUVILA VADAKKATHIL,
PUNIKKANNOOR.

3. UNITED INDIA INSURANCE COMPANY,
KOLLAM.

* 4. ABDUL RASHEED, CHARUVILA PUTHEN VEEDU,
PERUMANTHALA, EZHUKONE.

* 5. VIJAYA MOHANAN PILLAI,
VINOD BHAVAN, MEENADU.

(**respondents 4 and 5 are deleted from the party array as per order dated 23.09.2015 in I.A. No. 3259 of 2015*)

R,R3 BY ADV. SRI.P.V.JYOTHI PRASAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.
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M.A.C.A. No. 302 of 2005
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Dated, this the 13th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

The appellants have approached this Court raising a challenge against the verdict passed by the Tribunal in fixing the liability in respect of the compensation to be satisfied because of the death of son of the appellants 1 and 2, sibling of the 3rd appellant, in a road traffic accident occurred on 3.7.1996

2. The case of the appellants was that the deceased was travelling in a lorry bearing No. KL7 B 8917 and while proceeding so, it hit against another lorry bearing No. KL 7 B 8940, owned and driven by the respondents 4 and 5 respectively before the Tribunal, which came from the opposite direction. The accident caused fatal injuries and the deceased succumbed to the same, which led to the claim petition preferred before the Tribunal.

3. It was contended that the deceased was a general worker and was having a monthly income of Rs.5000/-. Evidence adduced

before the Tribunal from the part of the appellants consists of deposition of the second petitioner as PW1 and deposition of PW2, who was stated as an independent witness, besides Exts. A1 to A7 documents. Insurance Company contended that there was no valid policy coverage for the deceased, who was a gratuitous passenger and as such, the claimants were not entitled to get any compensation. RW1 was examined in support of their case. Respondents Nos.1 and 2 chose to remain absent and they were set exparte. Based on the available materials on record, the Tribunal arrived at a finding that the accident was occurred because of the negligence on the part of the driver of the lorry, in which the deceased was travelling at the relevant time, and as such the liability was to be satisfied by the respondents 1 and 2.

4. Since no evidence was adduced from the part of the claimants as to the alleged employment or income and also considering the fact that the accident was occurred in the year 1996, a notional figure of Rs.1500/- was adopted as the monthly income. Observing that the deceased was a bachelor at the time of the accident and that there was every chance to marry, which in fact would have reduced the support to parents, a 'split up' multiplier was adopted. The multiplier of '5' was adopted in

respect of the initial period and for the residual period, multiplier of '11' was adopted. The monthly contribution to the family after deducting 1/3rd for the initial period was fixed at Rs.1000/- p.m. and for the residual period, it was taken as Rs.600/- p.m. The loss of dependency awarded by the Tribunal for the two spells came to be fixed as Rs.60000 [1000 x 12 x 5] and Rs.79200/- [600 x 12 x 11] respectively, thus coming to a total of Rs.139200/- under this head. A further sum of Rs.10000/- has been awarded by the Tribunal under the head of loss of love and affection. Rs. 5000/- towards the funeral and transportation expenses and another sum of Rs.5000/- towards the head of pain and sufferings, though the death was on the same day. Thus the Tribunal granted total sum of Rs.1,59,200/-, rounded to Rs. 1,60,000/-. The Tribunal also arrived at a finding, based on the pleadings and evidence brought on record, that the deceased at the relevant time was travelling as a gratuitous passenger in the vehicle. Holding that there was no valid policy coverage, the insurance company was exonerated and the liability was mulcted upon the respondents 1 and 2, who were directed to satisfy the same with interest @ 9% p.a. from 14.10.1996. This is sought to be enhanced by filing this appeal; raising other grounds as well.

5. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the Insurance Company.

6. Despite completing service of notice to the respondents 1 and 2, they did not choose to contest the matter. During the pendency of the proceedings, respondents 4 and 5 (service to whom was not complete in delay petition and who were the owner and driver of other vehicle involved) were sought to be deleted from the party array by filing I.A. No. 3259 of 2015, stating that, they are not necessary parties, which was allowed as per order dated 05.10.2015. The learned counsel for the appellants submits that the Tribunal was not correct in having exonerated the Insurance Company from the liability. It is also pointed out that negligence is not a 'sine qua non' as far as the liability to pay compensation is concerned; more so, when two vehicles are involved and it is a case of 'composite negligence'.

7. After hearing both the sides, this Court finds that fixation of negligence was considered by the Tribunal and a clear finding was rendered as to the actual reason for the accident. If the version of the appellant as to the negligence on the part of the driver of the vehicle concerned is to be entertained, it was very much necessary to have completed the service of notice to the

concerned respondents, giving an opportunity of hearing to them as well, particularly as to the further course of action to be pursued by them with regard to the extent of liability, if the findings of the Tribunal were to be interfered by this Court in any manner. In the affidavit dated 15.09.2015 filed in support of I.A. No. 3259 of 2015 [which is a verified petition], particularly in paragraph 3, it is stated that no relief is sought for against the respondents 4 and 5 and that they might be deleted from party array, which was allowed as mentioned herein before. In the said circumstances, this point is no more liable to be considered by this Court. Point is answered against the appellant.

8. After going through the materials on record, this Court finds that the claimants did not have a case that the deceased was travelling in the concerned goods carriage at the relevant time in the capacity as the owner accompanying goods. Based on the available materials on record, the Tribunal arrived at a finding that the deceased was travelling as a gratuitous passenger and as such, the said finding does not warrant any interference at the hands of this Court, as no contrary evidence was let in so as to have it intercepted.

9. The next question is with regard to the liability, if any, to be satisfied in respect of a gratuitous passenger. The learned counsel for the appellant sought to place reliance on the decision rendered by the Apex Court in **New India Assurance Co. Vs. Satpal Singh [2000 (1) KLT 95]** holding that an insurance policy covering third party risk is not supposed to exclude gratuitous passengers in a goods vehicle. The said decision has already been overruled in **United India Insurance Co. Ltd. Vs. Tilak Singh** reported in **2006 (2) KLT 884,** clearly holding that a statutory insurance policy intended to cover the risk to life or damage to properties of third parties will not cover the risk of death or injury to a gratuitous passenger carried in a goods carriage. This being the position, the verdict passed by the Tribunal exonerating the Insurance Company does not warrant any interference.

10. The remaining question is with regard to the quantum of compensation awarded by the Tribunal. The accident was occurred on 03.07.1996. It was with effect from 14.11.1994, that the Parliament found it fit and proper to introduce the 2nd schedule to the Motor Vehicles Act to grant compensation in a uniform manner as contemplated under Section 163A of the Act. In cases where income and avocation were not proved, a notional income of

Rs.15,000/- p.a. had to be taken. Though the Tribunal reckoned monthly income as Rs.1500/-, a split up multiplier of 5 and 11 were taken for computing the compensation under the head of loss of dependency based on the relevant factors, which probably may be justified on the basis of the position prevailing on the said date. But now, the legal position has been made clear by the Apex Court holding that multiplier in respect of the age of the deceased has to be taken for computing the loss of dependency; which in the instant case is '18'. This Court finds it fit and proper to adopt the said multiplier for reworking the compensation. Since the parents alone are the legal representatives of the deceased (who was a bachelor), 50% deduction from the notional income has to be made. On reworking the compensation under the head of loss of dependency, it will come to Rs.1,62,000/- [Rs.1500 x 12 x 18 x 50/100]. After giving credit to a sum of Rs. 139200/- already granted by the Tribunal, the balance compensation under this head will come to **Rs.22,800/-.** Considering the totality of the facts and circumstances, we find that a further of sum of **Rs.10,000/-** can be awarded towards loss of love and affection and other attending circumstances. So the total balance compensation payable will come to **Rs.32,800/-,** which shall be satisfied with interest @ 9% p.a. It is seen that the appeal is filed with a petition to condone the delay of '420' days, wherein notice was ordered on 14.02.2015, despite which, no process charges were remitted till 16.03.2010, when two weeks' time was granted subject to satisfaction of cost ordered therein. No interest is payable for the said period, in view of the lapses. In the said circumstances, interest payable on the enhanced compensation can only be from the date of claim petition till the date of Award and thereafter from 16.03.2010. It is open for the appellants to proceed against respondents 1 and 2 for realization of the due amount.

The appeal stands allowed to the said extent.

sd/-
P. R. RAMACHANDRA MENON,
JUDGE

sd/-
K. HARILAL,
JUDGE

kmd