

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&**

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

MACA.No. 717 of 2005 ()

AGAINST THE AWARD IN OPMV 1697/1997 of M.A.C.T., PALAKKAD DATED 30-04-2004

APPELLANT(S)/APPELLANTS/PETITIONERS:

- 1. KULANTHASWAMY, S/O.SELVANAYAKAM,
AGED 51 YEARS.**
- 2. RANI, AGED 46 YEARS,
W/O.KULANTHASWAMY**
- 3. JAYA, AGED 27 YEARS,
D/O.KULANTHASWAMY.
(ALL ARE RESIDING AT HOUSE NO.712, PAMPAMPALLAM
GANESAPURAM, KANJIKODE, PALAKKAD DISTRICT.**

**BY ADVS.SRI.O.P.NANDAKUMAR
SRI.V.A.AJAI KUMAR**

RESPONDENT(S)/RESPONDENTS:

- 1. K.ABBAS, AGE NOT KNOWN,
S/O.KAMARUDHEEN, RESIDING AT 3/64, VADACHITTUR
POLLACHI, TAMILNADU.**
- 2. KUTTYKRISHNAN, AGED NOT KNOWN,
S/O.NARAYANAN, RESIDING AT KRISHNA NIVAS, MADAKKALLUR
THOLI.**
- 3. THE NEW INDIA ASSURANCE COMPANY LTD.,
MUBARAK BUILDING, VADAKARA.**

**R,R3 BY ADV. SRI.P.G.GANAPPAN
R,R2 BY ADV. SRI.SANTHARAM.P**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 01-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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**P.R.RAMACHANDRA MENON
&
K.HARILAL, JJ.**

M.A.C.A No.717 of 2005

Dated this the 1st day of October, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

The loss resulted on the death of the sole bread winner of the family due to a road traffic accident made the claimants to approach this Court by filing this appeal, referring to the inadequacy of the compensation awarded by the Tribunal.

2. The accident occurred on 20.10.1997. The deceased, aged 18 years was proceeding along the road. By about 7.45 PM, the offending jeep came in a rash and negligent manner and knocked him down causing fatal injuries. The injured succumbed to the same on the same day. This led to the claim petition preferred by the parents and the sister of the deceased, claiming a total sum of Rs.5 Lakhs as compensation. The owner and driver of the vehicle did not choose to contest the matter and were set exparte. The insurer sought to challenge the negligence and quantum. The evidence adduced before the Tribunal consists of the oral deposition given by the first claimant (father of the deceased, who has been subsequently removed from the party array in the appeal, pursuant to his demise) as PW 1 and the documentary evidence adduced as Exts A1 to A7. Based on the materials on record, the Tribunal arrived at a finding that the accident was only because of the

negligence on the part of the driver of the jeep and the liability was sought to be fixed accordingly.

3. With regard to the quantum of compensation, the case projected by the claimants was that the deceased was working in Balaji Modern Spinning Mills, Kanjikode with a monthly income of Rs.2,500/-. The engagement of the deceased as above was sought to be substantiated by producing Ext.A5 Certificate issued by the Labour Welfare Officer, Balaji Spinners, Kanjikode dated 1.11.2002. However, observing that Ext.A5 did not reflect the monthly income, the Tribunal chose to reckon Rs.1,800/- as the notional income in this regard and worked out the compensation reckoning the multiplier as '16', based on the second schedule to the MV Act ; thus granting a sum of Rs.2,30,400/- under this head. The Tribunal awarded a further sum of Rs.2,500/- as loss of estate, Rs.2,000/- towards funeral expenses, Rs.5,000/- towards compensation for mental shock (presumably for pain and suffering) and Rs.10,000/- towards love and affection; thus granting a total sum of **Rs.2,49,900/-** which was directed to be satisfied with interest at the rate of 6% per annum. Since the policy was admitted, the due amount was ordered to be satisfied by the Insurance Company.

4. The learned counsel for the appellant submits that the amounts awarded by the Tribunal are abysmally on the lower side. The learned Counsel for the Insurance Company submits that the employment of the deceased was never proved and that he was

engaged only, as a mill apprentice', which did not confer any vested right to have employment by virtue of the relevant provisions of the Apprenticeship Act, 1961. It is also pointed out that the Tribunal deducted only 1/3rd towards the personal expenses and since the claim was by the parents, 50% ought have been deducted under this head. The learned counsel for the appellant submits that no evidence was adduced from the part of the Insurance Company as to the nature of engagement and no serious challenge was raised with regard to the contents of Ext.A5. It is stated that the deceased was working as a Mill Apprentice and thereafter he was assured of employment in the Mill. The learned counsel also points out that reckoning of the multiplier based on the age of the mother is not correct and that by virtue of the law declared by the Apex Court on the point it has to be with reference to the age of the deceased and if this be so, the appropriate multiplier would be 18. It is also brought to the notice of this Court that the multiplicand ought have been fixed also considering the future prospects.

5. After hearing both the sides, eventhough the Tribunal cannot be blamed for having observed that the income and avocation were not properly proved; it could be reasonably be discerned inferred from the available materials on record, that the deceased was at least obtaining training in the Mill by virtue of his engagement as Apprentice; which would have enabled him to obtain a proper employment with reasonable income as skilled/semi-skilled

worker. This being the position, striking a balance, we find it appropriate to reckon Rs.2000/- as the monthly income and work out the compensation accordingly. We also find it appropriate to have deduction only to the extent of $1/3^{\text{rd}}$ towards personal expenses, as the claim petition was preferred by the parents and also by the unmarried sister. On re-working the compensation as above, the claim for dependency will come to Rs.2,88,000/- ($\text{Rs.2000} \times 12 \times 2/3 \times 18$). After giving credit to the sum of Rs. 2,30,400/- awarded by the Tribunal, the balance comes to **Rs.57,600/-**.

6. It is seen that the Tribunal has awarded only a sum of Rs.2,000/- towards the funeral expenses. The accident occurred in the year 1997. Considering the relevant facts and circumstances, we enhance the same by a further sum of **Rs.3,000/-**. Only a sum of Rs.25,000/- was claimed towards the loss of love and affection, but the Tribunal awarded only Rs.10,000/- under this head. We find absolutely no reason for having the said amount reduced by the Tribunal and we find it appropriate to grant the entire amount as claimed by the claimants i.e, Rs.25,000/-. After setting off the amount of Rs.10,000/- awarded by the Tribunal the balance comes to **Rs.15,000/-**. The total balance compensation payable comes to **Rs.75,600/-** (Rupees Seventy Five Thousand Six Hundred Only). It is noted that interest awarded by Tribunal is only at the rate of '6%' per annum; which at that time, ought to have been 7.5%. As on

date, the interest payable by virtue of the law declared by the Supreme Court, is '9%'. Striking a balance, we find it appropriate to hold that the due amount shall be paid to the claimant with interest at the rate of '8%' per annum from the date of filing the petition till the disbursement effected. Since the policy is admitted, we direct the Insurance Company to satisfy the due amount within one month. Appeal stands allowed to the said extent.

**Sd/-
P.R.RAMACHANDRAN MENON
JUDGE**

**Sd/-
K.HARILAL
JUDGE**

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PA TO JUDGE

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