IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

MACA.No. 1096 of 2005 ( )

(AGAINST THE AWARD IN OPMV 30/1999 of ADDL.D.C. & ADDL.MACT,THALASSERY DATED 30-10-2004)

APPELLANTS/PETITIONERS::
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1. NUCHIYIL NANI, W/O. LATE ACHUTHAN,
AGED 54 YEARS, MEETHALAPURAYIL HOUSE
KANDAMKUNNU AMSOM, KAITHERI DESOM, NIRMALAGIRI P.O.
KANNUR.

2. NUCHIYIL BALAKRISHNAN, S/O. NANI,
AGED 32 YEARS, RESIDING -DO-.

3. NUCHIYIL SHOBHA, AGED 29 YEARS,
D/O. NANI, RESIDING -DO-.

4. NUCHIYIL SOMAN, AGED 27 YEARS,
S/O. NANI, RESIDING -DO-.

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S)/RESPONDENTS::
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1. SMT.ANNAMMA THOMAS,
MADIYATH HOUSE, NEDUMPOYIL P.O., KANNUR DISTRICT.

* 2. M.P. BABU, S/O. PAULOSE,
MANIYADAN HOUSE, KOTTIYOOR AMSOM, DESOM.
(* DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 11.08.2015 IN I.A.No.2688 of 2015)

3. THE NEW INDIA ASSURANCE CO. LTD.,
BRANCH OFFICE, MAHE-673 310.

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 23-09-2015, 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.1096 OF 2005

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Dated this the 23rd September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

Inadequacy of the compensation awarded in O.P.(MV) 30 of 1999 of the MACT, Thalassery is the subject matter of challenge in this appeal preferred by the claimants. The accident occurred on 12.01.1998 when the daughter of the first appellant, who is the sister of the appellants 2 to 7 was travelling in the bus bearing No.KL.13/B 2239**,** owned by the first respondent , driven by the second respondent and insured by the third respondent. When the deceased was alighting from the bus at the stop, without any care and caution and quite in a rash and negligent manner, the bus was taken to the front, as a result of which, the deceased fell down and sustained fatal injuries . Though she was taken to the hospital immediately and a surgery was conducted, it could not save her life and she bid farewell to this world. This led to the claim petition filed by the mother and siblings as mentioned above.

2. The policy was admitted, though negligence was sought to be disputed by the Insurance Company. Evidence, both oral and documentary, was adduced from the part of the claimants by examining P.W.1 and also by marking Exts.A1 to A3. After analysing the evidence, the Tribunal arrived at a finding that the accident was only because of the rash and negligent driving of the bus by the second respondent driver. The deceased was stated as a Pre-degree student. In the said circumstance, the Tribunal reckoned Rs.1500/- as the notional income per month. However, considering the age of the mother, ie., first claimant, a lesser multiplier of '8' was reckoned for the purpose of computing loss of dependency, which was fixed as Rs.96 000/-.

3. The amounts awarded by the Tribunal under various heads are given below:

Head	Amount awarded by the Tribunal
Loss of dependency	96000
Transporotation and funeral; expenses	5000
Pain and suffering	5000
Loss of love and affection	15000
TOTAL	**121000**

A total compensation of Rs.1,21,000/- was ordered to be satisfied by the Insurance Company with interest at the rate of 9% per annum from 05.01.1999, the date of application, till the date of payment. Enhancement is sought for in the appeal.

4. Heard the learned counsel for the appellants as well as the learned Counsel for the Insurance Company.

5. The learned Counsel for the appellants points out that the notional income reckoned by the Tribunal is abysmally on the lower side. It is stated that same is the position with regard to the multiplier chosen and that future prospects have not been considered . The learned Counsel appearing for the

Insurance Company submits that the deceased was admittedly a student and hence the Tribunal was justified in taking the notional income as Rs.1500/- per month. It is stated that the first claimant/mother alone was to be considered as an eligible claimant and the others aged 32, 29 and 27 at the time of filing the claim petition, who are siblings of the deceased, could not have claimed any loss of dependency, being not dependents. As such, 50% of the notional income had to be reduced; whereas the Tribunal has reduced only 1/3rd towards probable personal expenses. It is stated that the proper multiplier to be taken, based on the declaration of law by the Apex Court shall be with reference to the age of the deceased and not with reference to the age of the dependents.

6. As per the verdict passed by the Apex Court in **Sarla Verma vs. Delhi Transport Corporation (2009(6) SCC 121)**, the appropriate multiplier considering the age of the deceased, is '18'. Going by the calculation, reckoning the same notional income, the figure comes to Rs. 2,16,000/-(1500 x 12 x

2/3 x 18). Considering the future prospects with reference to the declaration of law in Sarla Verma's case (cited supra) , if the income is enhanced as Rs.2000/- (which we find it appropriate) and calculation is made after setting off 50% of the income, since the mother alone can be the sole dependent, the loss of dependency comes to Rs.216000/- (2000 x 12 x 1/2 x 18). Virtually the figures are same and we find that the actual compensation payable in respect of loss of dependency shall be Rs.2.16 lakhs. After giving credit to the sum of Rs.96000/- awarded by the Tribunal, the balance comes to **Rs.1,20,000/-.** It is seen that the Tribunal has awarded only a sum of Rs.15000/- towards loss of love and affection. We find it appropriate to enhance the same to Rs.50000/- and hence a balance sum of **Rs.35000/-** is also to be paid to the claimants considering the totality of the circumstances. The balance compensation payable comes to **Rs.1,55,000/**- **(Rupees one lakh and fifty five thousand only)** which shall be satisfied with interest at the rate of **9%** from the date of filing the petition till realisation. Since the policy stands admitted, the Insurance Company shall satisfy the due amount within one month from the date of receipt of a copy of this judgment.

The appeal stands disposed of.

P.R. RAMACHANDRA MENON,
JUDGE

K. HARILAL,
JUDGE

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