IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

MACA.No. 673 of 2012 ()

AGAINST THE AWARD IN OPMV 745/2008 ON THE FILE OF THE IST ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE DATED 19-11-2011

APPELLANTS/PETITIONERS:
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1. ASWATHI VINOD
D/O.K.VINOD KUMAR, THYKKANDIYIL HOUSE, CHELANNUR P.O.
KOZHIKODE DISTRICT.

2. AJAY VINOD
S/O.K.VINOD KUMAR, AGED YEARS
(MINOR-D.O.B. 06-10-1995) THYKKANDIYIL HOUSE
CHELANNUR P.O., KOZHIKODE DISTRICT
REP. BY HIS GUARDIAN P.C.BALAN NAIR
S/O.LATE APPU NAIR, AGED 71 YEARS, THYKKANDIYIL HOUSE
CHELANNUR P.O., KOZHIKODE DISTRICT.

BY ADV. SMT.BINDU GEORGE

RESPONDENT/3RD RESPONDENT:

M/S. ORIENTAL INSURANCE CO.LTD.
6 VIKAS NAGAR, SCH.NO.14/IDR, AMBEDKAR MARG
NEEMUCH CITY, MADYA PRADESH-458 441.

R1 BY ADV. SRI.MATHEWS JACOB (SR.)
R BY ADV. SRI.P.JACOB MATHEW
R BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.,

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M.A.C.A. Nos.673/2012 & 762/2012

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Dated this the 24th day of March 2015

JUDGMENT

Ramachandran Nair , J.,

These appeals are filed by the appellants in both cases. They are the children of the deceased. They lost both the parents in the accident. M.A.C.A 673/12 is from the award in O.P (MV) No. 745/08 and M.A.C.A. 762/12 is from the award in O.P. (MV)No.746/08 on the file of the Motor Accidents Claims Tribunal, Kozhikode.

2. Appellant No.2 is represented by her grant father/guardian in both appeals. The accident occurred on 23.6.07 at about 9.30 p.m. The deceased late Sri. Vinod was travelling in a maruthi car along with his wife Geetha and children from Kannur to Kozhikode through the national highway when they reached near to Vengalam Railway Over bridge, it collided with a lorry bearing registration No. MP-44/J 0597. Due to the impact of the

hit of the lorry against the maruthi car, all the passengers in the car sustained injuries. They were taken to hospital and both the parents died. Sri. Vinod died on the same day on the way to the hospital and Smt. Geetha died on 25.6.2007.

3. We heard learned counsel on both sides.

4. The dispute is mainly with regard to the quantum of compensation and as regards negligence found, there is no appeal by the respondents.

5. The claimants have produced various documents including Exts.A3 to A5.

6. The appellants were respectively aged 18 and 12 at the time of the accident. First we will consider the grounds raised in M.A.C.A.673/12.

7. The deceased Sri. Vinod kumar was a timber merchant and he was aged 44 years at the time of the accident and was earning Rs. 30,000/- per month. Even though, Exts.A9, A12 & Ext.A13 were relied upon by the appellants before the Tribunal, to prove the income of the deceased, the Tribunal found that those documents do not reflect the earnings of the deceased on a regular basis. He was an assessee under

the circle of Commercial taxes, Kozhikode and was managing the firm under the name Geethanjali Trading Company, Kolagappara, Wayanad. Regarding the profits of the firm also there was no reliable evidence before the Tribunal. It appears that the Profit and loss Accounts were also not produced. It was further contended that he had landed properties from which also income was substantial. But regarding the details of the landed properties owned by him also evidence was not adduced. Therefore, finally, the Tribunal fixed the notional income at Rs. 3,750/- per month on an assumption that he can earn Rs. 125/- per day in the year 2007. After considering his age as 43, the multiplier adopted is 14 and 1/3 was deducted towards personal expenses of the deceased and the compensation has been reckoned at Rs. 4,20,000/- for loss of dependency, Rs. 5,000/- each for loss of love and affection of appellants, Rs. 10,000/- towards loss of estate and Rs. 5,000/- towards funeral expenses and Rs. 600/- for damage to clothing articles.

8. As far as M.A.C.A.762/12 is concerned, therein also it was pointed out that the deceased Geetha was also a partner of the business along with her husband. In the grounds of appeal, it is

contended that she was aged 38 years at the time of the accident. She was having properties and was earning income from her properties also. The monthly income was fixed at Rs.3,000/- as a house wife.

9. We find from the award that the Tribunal granted total compensation at Rs. 4,56,745/- by reckoning compensation for loss of dependency at Rs. 3,60,000/-, Rs. 10,000/- each for loss of love and affection. Rs.5,000/- towards funeral expenses, Rs. 10,000/- towards loss of estate, Rs. 1,000/- towards hospital charges, Rs. 57,745/- towards medical expenses, Rs. 1,000/- towards damage to clothing, Rs. 1,000/- each towards transportation charges and extra nourishment charges.

10. Learned counsel for the appellant Smt. Bindu George submitted that the fixation of monthly income in both cases do not reflect the ground realities. It is submitted that there cannot be any dispute that they were partners in business. It is also submitted that after the death of parents of the appellants, the firm had to be dissolved. In the light of the above, learned counsel submitted that the income arrived at by the Tribunal requires modification.

11. Learned Senior counsel for the Insurance company

Sri. Mathews Jacob contended that in the absence of reliable evidence either with regard to the turn over of business or with regard to the profit per month or the partner's share, this Court cannot fix the monthly income as claimed by the appellants.

12. Having considered the rival submissions, the senario emerging is that they have been in business but actual profit or the partner's share are not evident. Therefore, we will not be justified in adopting the claim at Rs. 30,000/- each. The method adopted by the Tribunal as regards Sri. Vinod Kumar is by calculating the daily earnings at Rs. 125/- per day. The accident occurred in the year 2007. Therefore, according to us, the amount arrived at Rs.125/- per day will be very low. We are of the view that atleast at the rate of Rs. 200/- per day will have to be reckoned which will come to Rs. 6,000/- per month. As far as mother of the appellants is concerned even though, there is no definite evidence regarding her earnings, evidently, she was managing the affairs of the house also, caring for the children as well as the parents of the husband. It is settled by various decisions of the apex court that even in respect of house wives for the services rendered by them to the family, amount can be quantified. Therefore, we fixt it at

Rs.4,000/- per month as far as the mother is concerned. The appellants are entitled for compensation for loss of love and affection at Rs.1 lakh in each case, towards funeral expenses we grant an amount of Rs. 25,000/- each, as the death occurred on different dates. For pain and suffering we fix it at Rs. 10,000/- and 15,000/- in respect of these two cases. As far as amount towards loss of estate, the Tribunal has granted Rs. 5,000/- in the first case and Rs. 10,000/- in the 2nd case. We fix at Rs.25,000/- in respect of Sri. Vinodkumar and Rs. 20,000/- in the other case. Therefore, the total compensation is recomputed accordingly and the appeals are allowed to that extent.

13. Accordingly we modify the award as follows:

Sl. No.	*Heads*	*Amt. Awarded in M.A.C.A 673/12*	*Amt.modified in M.A.A.C.A 673/12*	*Amt.awarded in M.A.C.A. 762/12*	*Amt.modified in M.A.C.A. 762/12*
1	Loss of love and affection to the 1st petitioner	5000	100000	10000	100000
2	Loss of love & affection for the 2nd petitioner	5000		10000	
3	Loss of estate	10000	25000	10000	20000
4	Funeral expenses	5000	25000	5000	25000
5	Dependency compensation	420000	672000	360000	480000

Sl. No.	Heads	Amt. Awarded in M.A.C.A 673/12	Amt.modified in M.A.A.C.A 673/12	Amt.awarded in M.A.C.A. 762/12	Amt.modified in M.A.C.A. 762/12
6	Transport expenses	1000	1000	1000	1000
7	Damage to clothing	600	600	1000	1000
8	Extra nourishment			1000	1000
9	Hospital charges for two days			1000	1000
10	Medical expenses			57745	57745
11	Pain and suffering	-	10000	-	15000
		446600	833600	456745	701745

14. In M.A.C.A. 673/2012, the appellants are entitled to a total compensation of Rs. 8,33,600/- (Rupees Eight lakh Thirty three thousand Six hundred only) and the enhanced compensation which will carry interest at the rate of 9% p.a from the date of petition. The amount will be shared equally by the appellants.

15. As far as M.A.C.A.No. 762/2012 is concerned, we award a total compensation of Rs. 7,01745/- (Rupees Seven lakh One Thousand Seven hundred and Forty Five only) which will carry interest at the rate of 9% p.a from the date of petition for the enhanced compensation. The appellants will share the amount equally.

16. The insurance company is directed to deposit the amount less

the amount already deposited within a period of three months. We permit the appellants to withdraw the amount.

The parties will suffer their costs in this appeal.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-
P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge