IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

MACA.No. 1010 of 2012 ()

AGAINST THE AWARD IN OPMV 1421/2009 of M.A.C.T.,ERNAKULAM
DATED 31-08-2011

APPELLANT(S):PETITIONERS
----

1. SARADA CHANDRAN, AGED 50 YEARS
W/O DECEASED P.R.CHANDRASEKHARAN NAIR, 4/474
KRISHNA KRIPA, HILL PALACE, NADAMA VILLAGE
THIRUVANKULAM POST, TRIPUNITHURA, ERNAKULAM.

2. SARATH CHANDRAN, AGED 27 YEARS
S/O DECEASED P.R.CHANDRASEKHARAN NAIR, 4/474
KRISHNA KRIPA, HILL PALACE, NADAMA VILLAGE
THIRUVANKULAM POST, TRIPUNITHURA, ERNAKULAM.

3. SREELAKSHIMI, AGED 21 YEARS
D/O DECEASED P.R.CHANDRASEKHARAN NAIR, 4/474
KRISHNA KRIPA, HILL PALACE, NADAMA VILLAGE
THIRUVANKULAM POST, TRIPUNITHURA, ERNAKULAM.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENT(S):RESPONDENTS
----

1. SANTHOSH KUMAR K.V,
S/O.VIJAYAKUMAR,
KOTTAKUDI HOUSE,
OPP.MARIA HOSPITAL,
KURUPPAMPADY, RAYAMANGALAM-683 545.

2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM - 695 001.

3. THE DISTRICT INSURANCE OFFICER,
KERALA STATE INSURANCE DEPARTMENT,
THIRUVANANTHAPURAM, PIN - 695 001.

R2 & R3 BY GOVERNMENT PLEADER SMT.P.A.RAZIYA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A No.1010 of 2012

--

Dated this the 16th day of January, 2015

JUDGMENT

Asha, J.

The appellants are the widow and children of the deceased Chandrasekharan Nair, who succumbed to the injuries sustained in a motor vehicle accident, which occurred on 27.10.2007. While riding his motorcycle, the deceased was knocked down by a Tavera Car bearing Reg.No.KL 01AQ 4373. He sustained very serious injuries and was immediately taken to Ernakulam Medical Centre Hospital where he died.

2. The deceased was working as a Senior Operator in Kochi Refineries Limited. It was claimed that he was drawing a monthly salary of Rs.50,000/-. He was aged 55 years at the time of the accident. The claim petition was filed seeking compensation to the tune of Rs.53,85,000/-, which was limited to Rs.30 lakhs. The Tribunal passed an award for a sum of Rs.10,94,500/- This appeal is filed, aggrieved by the inadequacy in the compensation awarded, seeking enhancement.

3. The learned counsel for the appellant raised mainly 3 contentions :-

(1) Tribunal was not right in reckoning the monthly income of the deceased at Rs.20,000/-, contrary to the income shown in Ext.A17 certificate.

(2) The multiplier adopted is incorrect. As the deceased was aged 55 years and had not attained the age of 56, the proper multiplier should have been 11 as against the multiplier of 8 adopted by the Tribunal.

(3) The multiplicand reckoned by the Tribunal is not correct.

In addition to these, it was also pointed out that the compensation awarded under conventional heads are also thoroughly inadequate.

4. We heard the learned counsel appearing for the Insurance Company also, who opposed the claim for compensation supporting the award passed by the Tribunal.

5. From Ext A17, it is seen that the total earnings of the deceased was Rs. 28120/-. But the Tribunal, even though noticed it, took his monthly income only as Rs.25,506/- and after deducting the monthly TDS from it, found that the monthly

income of the appellant was only Rs.20,506/- and reckoned Rs.20,000/- as the multiplicand for the purpose of deciding loss of dependency, for the period upto the retirement. For the rest of the period Tribunal reckoned a notional income of Rs. 5,000/- as multiplicand. The learned counsel appearing for the appellant explained the contents of Ext A17 certificate and pointed out that the salary of the deceased was much higher and there was every chance for its revision before his retirement. We have examined Ext.A17 and it could be seen that the total earnings of the deceased was Rs.28,120/- for the month of October, 2007. Ext A17 also shows the estimated taxable income of the deceased for that year as Rs.3,65,680/- and the estimated tax payable as Rs.60,465/-. Therefore his monthly can be fixed as (365680-60465)/12, which will come to Rs.25,435/-. As rightly contended by the learned counsel for the appellants, the multiplicand adopted by the Tribunal reckoning the same at Rs.20,000/- is not correct. We therefore find that the actual multiplicand for the 1st spell upto retirement should be Rs.25,000/-. and for the 2nd spell we adopt the Rs. 5,000/-, as fixed by the Tribunal. As the deceased was aged 55 years at the time of the accident, the proper multiplier to be adopted is 11, going by the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** [2010(2) KLT 802(SC)]. Being a Central Government employee, he could have continued in service till he attained the age of 60 years. Reckoning his income @ Rs.25,000/- per mensem, and after deducting one third towards personal expenses, since there were 3 dependants in the family, compensation towards loss of dependency for the 1st spell of 5 years would come to Rs.9,99,900/- (Rs.25000 X 2/3x12 X 5). Applying the multiplicand as Rs.5,000/- for the period after retirement for the rest of six years, ie. as against the multiplier of 11,will come to Rs.3,60,000/-. Accordingly we refix the compensation under the head loss of dependency at Rs.13,59,900/- (Rs.9,99,900/- + Rs.3,60,000/-).

6. We find that the Tribunal has awarded only a sum of Rs.7,500/- towards funeral expenses; Rs.25,000/- towards loss of love and affection; and Rs.15,000/- towards loss of consortium. Going by the judgment of the Apex Court in **Rajesh v. Rajbir Singh** [2013(3) KLT 89(S.C)], we enhance the compensation under the head of funeral expenses to Rs.25,000/-, under the head of compensation for love and affection to Rs.1 lakh and towards compensation for loss of consortium to Rs.1 lakh. In

addition to that, we find that the Tribunal has awarded compensation for `loss of estate and dependency' under a single head. We award the compensation under two heads, ie. `loss of dependency' and `loss of estate' separately. Therefore, we deem it just to award a sum of Rs.50,000/- towards loss of estate. Accordingly, the award passed by the Tribunal is modified as follows:

Sl.No.	***Head of claim***	***Amt.***
1	Loss of estate	Rs. 50,000.00
2	Loss of dependency	Rs.13,59,900.00
3	Transport expenses	Rs. 2,000.00
4	Funeral expenses	Rs. 25,000.00
5	Compensation for pain and sufferings	Rs. 10,000.00
6	Compensation for loss of love and affection	Rs. 1,00,000.00
7	Compensation for loss of consortium	Rs. 1,00,000.00
	TOTAL	**Rs.16,46,900.00**

(Rupees Sixteen lakhs forty six thousand nine hundred only)

7. The appellants will be entitled to a total compensation of Rs.16,46,900/- (Rupees Sixteen lakhs forty six thousand nine hundred only). This will carry interest @ 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of

three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimants can withdraw the amount .

The appeal is allowed accordingly. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.V.ASHA
Judge

rtr/

/true copy/

P.S to Judge