IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

MACA.No. 1519 of 2005 ( )

AGAINST THE AWARD IN OPMV 286/2000 of MACT ALAPPUZHA DATED 31-01-2005

APPELLANT(S)/APPELLANTS/PETITIONER:

1. LEELA SURENDRAN, W/O.SURENDRAN,
VELIPARAMBIL HOUSE, THURAVOOR PANCHAYAT, 8
THIRUMALA BHAGOM.P.O., CHERTHALA TALUK.

2. SREEJITH, S/O. SURENDRAN,
VELIPARAMBIL HOUSE, THURVOOR PANCHAYAT-8
THIRUMALA BHAGOM.P.O., CHERTHALA TALUK.

3. PADMAKSHI, W/O.PADMANABHAN,
RAGHUL NIVAS, MARARIKULAM SOUTH PANCHAYAT
PATHIRAPPALLY.P.O., ALAPPUZHA.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENT(S):

1. MATHEW, JOSE, S/O. JOSE MATHEW,
PARTNER, V.M.THARIATH & CO. XIX/320, OLD MARKET
ALUVA, ERNAKULAM DISTRICT.

2. JOSEPH.A.J., S/O.JOSE,
ARIKKADAN HOUSE, NAZARATH ROAD, ALUVA MUNICIPALITY-17.

3. THE NATIONAL INSURANCE CO.LTD.,
DIVISIONAL OFFICE, P.B.NO.89, PUMP JUNCTION
ALUVA-683 101.

R,R1 BY ADV. SRI.K.C.ELDHO
R,R2 BY ADV. SRI.C.S.AJITH PRAKASH
R,R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 03-11-2015, ALONG WITH MACA. 976/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.

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M.A.C.A. Nos. 1519 of 2005
and 976 of 2009

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Dated, this the 3rd day of November, 2015

<u>JUDGMENT</u>

<u>Ramachandra Menon, J.</u>

Inadequacy of the compensation awarded by the Tribunal in respect of death of a person aged 48 years in a road traffic accident is the subject matter of challenge in this appeal preferred by the claimants, who are the legal heirs.

2. The accident was on 18.02.2000. While the deceased was peddling his bicycle, he was knocked down by a mini lorry bearing No. **KL7 F 2061** owned, driven and insured by respondents 1 to 3 respectively, leading to serious and fatal injuries and ultimately he succumbed to the same bidding farewell to this world on the same day. Loss was sought to be compensated by filing claim petition before the Tribunal.

3. The owner and driver of the vehicle chose to remain ex-parte. Insurance company took up a contention that the driver of the mini lorry was not having a valid licence to drive the vehicle, hence there was violation of statutory/policy condition. Evidence adduced before the Tribunal consists of sole testimony of PW1 and

documents produced as Exts. A1 to A11 from the part of the claimants. Copy of the policy certificate was produced and marked as Ext. B1 from the part of the Insurance Company.

4. After analysing the materials on record, the Tribunal arrived at a conclusion that the accident was occurred solely because of the negligence on the part of the driver of the mini lorry and proceeded to fix the compensation accordingly. Claimants contended that the deceased was a coir worker and was having a monthly income of Rs.5000/-. In support of the said contention, the claimants produced Annexure A8 which was a salary certificate dated 29.05.2000 and Annexure A9 welfare card with regard to the membership of the deceased in the welfare fund. In Annexure A9 welfare card monthly salary of the deceased was stated as Rs.3120/- during the year 1997. The concerned Village Officer also certified the annual income as Rs.36000/- vide Ext. A10. The said documents were marked, subject to further proof. Observing that the parties who issued the certificate were not examined, the Tribunal reckoned Rs. 2500/- as monthly income and worked out loss of dependency, adopting the multiplier '13', thus granting a sum of Rs.2,60,000/-. Amounts awarded under other heads are

as follows :

Transport to hospital	: Rs. 2,000/-
Treatment and medicine	: Rs. 2,000/-
Funeral expenses	: Rs. 3,000/-
Loss of articles	: Rs. 1,000/-
Pain and sufferings	: Rs. 5,000/-
Loss of love and affection	: Rs.10,000/-
Loss of consortium	: Rs.10,000/-

Thus, the Tribunal granted a total compensation of Rs. 2,93,000/-, which was directed to be satisfied with interest @ 6% p.a. from the date of petition till realization and a cost of Rs.4000/-. Since the policy coverage was admitted, the Insurance Company was directed to satisfy the said amount. The right of recovery was conferred upon the 3rd respondent. This led to two appeals viz. MACA No. 1519 of 2005 preferred by the claimants for enhancement of the compensation and MACA No. 976 of 2009 preferred by the first respondent/owner contending that the driver was having effective and valid licence on the date of accident and as such, the recovery right granted in favour of the Insurance Company required to be intercepted.

5. Additional documents have been produced by the owner of the vehicle/appellant in MACA No. 976 of 2009 vide Annexures A1 to A3 along with C.M. Appln. No.1148 of 2009 seeking to condone the delay in filing the appeal. Subsequently, the appellant produced some additional documents as Annexures A4 to A8 along with I.A. No. 2415 of 2009. Annexures A6 and A7 are the driving licence particulars of the driver. Copies of the aforesaid proceedings were given to the learned counsel for the Insurance Company. During the course of hearing, the learned counsel for the Insurance Company submits, with reference to the materials on record, that the licence now produced before this Court revealed that the driver was duly licensed on the date of accident i.e. on 18.02.2000. This being the position, this Court finds that the right of recovery granted in favour of the Insurance Company is liable to be intercepted. Accordingly, the appeal filed by the owner of vehicle by way of M.A.C.A. No. 976 of 2009 stands allowed.

6. Coming to the appeal filed by the claimants for enhancement of compensation vide MACA No. 1519 of 2005, it is true that the claimants did not examine the parties who issued Exts. A8 to A10 certificates. But the fact remains that the accident

was in the year 2000. It is also relevant to note that, at the time of the accident, the deceased was aged 48 years and he was maintaining his family consisting of his widow, minor son and mother, who were claimants before the Tribunal. The capacity to maintain the said family itself is a pointer to the probable/minimum income which would have been generated by the deceased. Considering the totality of the facts and circumstances, we find it fit and proper to fix Rs.3500/- as monthly income instead of Rs.2500/- fixed by the Tribunal. The multiplier adopted by the Tribunal as '13' is correct and proper and on reworking the compensation towards the loss of dependency it will come to Rs.364000/- [3500 x 12 x 2/3 x 13]. After giving credit to a sum of Rs. 2,60,000/- already granted by the Tribunal, the appellant is entitled to get a balance compensation of **Rs.1,04,000/-** under this head. The Tribunal has awarded only a sum of Rs.3,000/- towards the funeral expenses. We find it fit and proper to enhance the same to Rs.5000/-, thus resulting a balance of **Rs.2,000/-.** A sum of Rs.10,000/- alone has been awarded by the Tribunal towards the loss of consortium, which is abysmally low, and requires to be enhanced to some extent. We find it fit and proper to grant a further sum of **Rs.40,000/-** under this head. Similarly, towards loss of love and affection, only a sum of Rs.10,000/- has been awarded by the Tribunal. Considering the economic situation prevailing on the relevant date, we find it fit and proper to grant a sum of **Rs.40,000/-** more under this head. Accordingly, the total balance/additional compensation to be paid to the appellant will come to **Rs.1,86,000/- [Rupees One lakh Eighty six thousand only].** The Tribunal has awarded interest only at the rate of 6% p.a. Considering the date of accident, we find it fit and proper to grant interest @ 8% p.a. in respect of the balance compensation. Since the policy stands admitted by the insurance company, we direct the Insurance Company to deposit the due amount within one month from the date of receipt of a copy of this judgment.

M.A.C.A. No. 1519 of 2005 stands disposed of.

sd/-
P. R. RAMACHANDRA MENON,
JUDGE
sd/-
ANIL K. NARENDRAN,
JUDGE

kmd /True copy/

P.A. to Judge