IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

MACA.No. 1646 of 2012 ()

AGAINST THE AWARD IN OPMV 2139/2008 of M.A.C.T.,KOTTAYAM

APPELLANTS/PETITIONERS
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1. USHAKUMARI, PONNALAYAM HOUSE
@ MUNDUKUZHIYIL
KUNNUMPURAM
AMARA P.O., MADAPPALLY

2. ARUNKUMAR (MINOR)
REP. BY NEXT FRIEND MOTHER
USHAKUMARI
PONNALAYAM HOUSE
@ MUNDUKUZHIYIL
KUNNUMPURAM
AMARA P.O.
MADAPPALLY

3. AJITH P.A.(MINOR)
REP. BY NEXT FRIEND MOTHER USHAKUMARI
PONNALAYAM HOUSE
@ MUNDUKUZHIYIL, KUNNUMPURAM
AMARA P.O., MADAPPALLY

4. ABHIJITH (MINOR)
REP. BY NEXT FRIEND MOTHER
USHAKUMARI
PONNALAYAM HOUSE
@ MUNDUKUZHIYIL
KUNNUMPURAM
AMARA P.O.
MADAPPALLY

BY ADVS.SRI.K.A.HASHIM
SRI.M.I.ISMAIL

RESPONDENTS/RESPONDENTS
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1. TIJI THOMAS
PARAKUZHY
KURIACHANNPADI BHAGOM
PERUMPANACHY P.O.
PIN 686 536

2. MATHEW THOMAS, KALLOPARAMBIL
UMBID P.O.
THOTTAKADU
PIN 686 539

3. THE NATIONAL INSURANCE CO. LTD
DIVISIONAL OFFICE, KOTTAYAM
PIN 686 001

R3 BY ADV. SMT.P.A.REZIYA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.

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M.A.C.A.No.1646 OF 2012

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Dated this the 3rd day of September, 2015

JUDGMENT

Ramachandran Nair, J.

The bread winner of the family, the husband of appellant No.1 and the father of appellants 2 to 4 died in an accident which occurred 8.10.2008. The 5th petitioner before the Tribunal who is the father of the deceased died subsequently. They sought compensation to the tune of ₹25 lakhs and the Tribunal has granted an amount of ₹12,49,000/-.

2. The appeal is only on the question of adequacy of the quantum of compensation. The deceased was aged 46 years at the time of the accident and was a business man running business in the name and style of 'Arun Agencies and P.V.Agencies' . It was claimed that he was getting a monthly income of ₹25,000/-. To prove the business turn over and gross income, the appellants have produced Exts.A7 to A11, the income tax returns for the period from 2007-2008 to 2009-2010, balance sheet as on 31.03.2008 Ext.A12 and the balance sheet for the year 2006-2007 as Ext.A13. Ext.A14 is the registration certificate

issued by the Sales Tax Officer, Changanacherry. Ext.A15 is regarding the registration certificate issued by Central Sales Tax office. Ext.A16 is the VAT registration certificate. Exts.A18 and A19 are the licences issued by the Grama Panchayath. All these items of evidence were accepted by the Tribunal below and before the Tribunal, PW1, the wife of the deceased was examined. Going by her evidence, business was stopped subsequently. The same is clear from Ext.A25, the communication dated 5.11.2008 from the establishment to the Secretary of the Grama Panchayath stating that the establishment is being closed from 31.10.2008.

3. The Tribunal after assessing the evidence fixed the monthly income at ₹10,000/-. We find from the discussion in paragraph 10 that the gross income for the assessment period 2008-2009 is ₹1,55,858/-, for 2007-2008 it is ₹1,17,125/-, and in Ext.A7 the same is ₹1,42,790/-. Even if an average is taken, we are of the view that an amount of ₹12,000/- per month can be taken as the business income. Apart from the same, being the head of the family, due to the absence

of the deceased, the family has lost the service of the deceased for which also they are entitled for due consideration. Therefore the amount fixed at ₹12,000/- will be reasonable. As on the date of the death of the deceased, five dependents were there including the father. Therefore ¼ will have to be deducted for personal expenses. We also find that the amounts awarded towards funeral expenses at ₹5000/-, loss of love and affection at ₹25,000/-, loss of consortium at ₹20,000/- and loss of estate at ₹10,000/- require appropriate modification in the light of the judgments of the Apex Court namely, **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)** and the judgments following the same.

4. After considering various aspects, we refix the compensation in the following manner :

Head of claim	*Amount Awarded in rupees*
Medical expenses	1500
Transportation	3500
Funeral expenses	25000
Damage to cloths	1000
Loss of dependency	1404000 (12000 x 12 x 13 x ¾)
Pain and suffering	15000

Head of claim	*Amount Awarded in rupees*
Loss of love and affection	150000
Loss of consortium	100000
Loss of estate	50000
Total	1750000 (Rupees seventeen lakhs fifty thousand only)

5. The enhanced compensation will carry interest @ 9% per annum from the date of filing of the petition. The Insurance Company was found liable to satisfy the award which finding we confirm. Out of the enhanced compensation, 40% is ear marked to appellant No.1 along with its interest and the balance amount will be shared equally among appellants 2 to 4 and their share will be deposited in a Nationalized Bank till they attain majority. We also direct the Insurance Company to deposit the amount less the amount already deposited along with its interest within a period of three months and we permit the widow to withdraw her share also. If any of the appellants have already attained majority, he/she can withdraw the amount after producing the proof before the Tribunal.

The appeal is accordingly allowed. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

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