

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. 254 of 2007 (C)

AGAINST THE AWARD IN OPMV 1136/2003 of MACT VADAKARA DATED 26-10-2006

APPELLANT/1ST RESPONDENT :

T.FAISAL,
S/O.SAINUDHEEN,
ROYAL GARDENS, CONVENT CROSS ROAD, KASARGOD.

BY ADVS.SRI.V.N.ACHUTHA KURUP (SR.)
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH

RESPONDENTS/PETITIONERS & RESPONDENTS 2 & 3:

1. K.K.SURESH,
S/O.LATE KELAPPAN,
NEDIYAPARAMBATH HOUSE, VADAKARA AMSOM AND DESOM
P.O.VADAKARA, PIN-673 101.
2. BANUMATHI, W/O. SURESH – DO– –DO–.
3. ABDUL KHADER.B., S/O MOIDEEN.B.,
MELPARAMBIL HOUSE, P.O.KALANAD, KASARGOD DISTRICT,
PIN 671 121.
4. NATIONAL INSURANCE COMPANY LTD.,
IIIRD FLOOR, HIGH LANE PLASA, M.G.ROAD,
KASARGOD, KERALA, PIN 671 121.

R4 BY ADV. SMT.SARAH SALVY
R1 & R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.254 of 2007

Dated this the 3rd day of November, 2015

JUDGMENT

Anil K.Narendra, J.

The appellant is the 1st respondent in O.P.(MV)No.1136 of 2003 on the file of the Motor Accidents Claims Tribunal, Vadakara. The claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by respondents 1 and 2 herein who are the parents of Surabhi aged 10 years who died in a motor accident occurred on 23.7.2003 involving car bearing registration No.MH 02/JA 5384 owned by the appellant and driven by the 3rd respondent. The 4th respondent is the insurer of the said vehicle. The minor child succumbed to injuries on 14.9.2003. Respondents 1 and 2 filed Claim Petition before the Tribunal, claiming a total compensation of ₹5,00,000/-.

2. Before the Tribunal, the appellant and the 4th respondent insurer filed written statement contending that the accident occurred due to the negligence of the deceased in crossing the National Highway and not due to the rash and negligent driving of the 3rd respondent driver.

3. On the side of the claimants Exts.A1 to A6 were marked and the 2nd claimant was examined as PW.1.

4. From the available evidence, the Tribunal found that the accident occurred due to the rash and negligent driving of the car by the 3rd respondent-driver. Since the vehicle was not covered by a valid insurance policy, the 4th respondent insurer was absolved from the liability to pay compensation to the claimants. The Tribunal by award dated 26.10.2006 awarded a total compensation of ₹4,58,473/- and directed the appellant and the 3rd respondent to pay the said amount together with interest at the rate of 6% per annum from the date of petition till realisation with cost. It is challenging the award passed by the Tribunal, the appellant is before this Court in this appeal.

5. We heard the arguments of the learned counsel for the appellant, the learned counsel for respondents 1 and 2 and also the learned counsel for the 4th respondent.

6. In the impugned award, the Tribunal found that the accident occurred due to the rash and negligent driving of the car

by the 3rd respondent driver. Since the vehicle in question was not having a valid insurance coverage, the Tribunal held further that the appellant and the 3rd respondent, being the owner and driver of the offending vehicle are liable to pay the amount of compensation to the legal heirs of the deceased. As we have already noticed, the appellant and the 3rd respondent have not chosen to enter the box. The 2nd respondent herein, the mother of the deceased, who was examined as PW.1, has deposed that the offending vehicle driven by the 3rd respondent came in a rash and negligent manner and hit the child, while she was walking through the side of the road. It was based on the materials on record like Exts.A1 to A3, and the oral evidence of PW.1, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the offending vehicle by the 3rd respondent. In the absence of any vitiating circumstances pointed out by the appellant, we find absolutely no grounds to interfere with the aforesaid finding of the Tribunal. Similarly, in the absence of any reliable materials, we find absolutely no ground to

interfere with the finding of the Tribunal that the offending vehicle was not covered by a valid insurance, at the time of accident.

7. Regarding the quantum of compensation, the Tribunal, taking note of the fact that the deceased was aged 10 years, taken the notional annual income as ₹18,000/-. Relying on the judgment of the Apex Court in **Manju Devi and another Vs. Musafir Paswan and another (2005 ACJ 1999)** the learned counsel for the appellant would contend that, the Tribunal went wrong in computing the annual income of the deceased aged 10 years at ₹18,000/-, which is too excessive and without any rational basis. A reading of the aforesaid judgment of the Apex Court would show that, in that case the accident occurred on 2.7.1998 and the Apex Court fixed the notional annual income as ₹15,000/-. The second schedule to the Act was inserted by Section 64 of Act 54 of 1994, with effect from 14.11.1994. In the case on hand the accident occurred on 23.7.2003, nearly 9 years after the insertion of the second schedule to the Act. Therefore,

fixation of notional annual income of the deceased at ₹18,000/- by the Tribunal cannot be said to be either too excessive or irrational, warranting an interference in this appeal.

8. After fixing the notional annual income at ₹18,000/- the Tribunal deducted 1/3rd towards personal expenses and the balance amount of ₹12,000/- alone was taken as the multiplicand. Adopting a multiplier of 15, the Tribunal awarded a sum of ₹1,80,000/- towards loss of dependency, which represents only a just and reasonable compensation under that head, warranting no interference in this appeal.

9. The learned counsel for the appellant would also contend that, the compensation awarded by the Tribunal under other heads is on a higher side. The materials on record indicate that after the accident the child was hospitalized for 52 days and she succumbed to injuries. Towards funeral expenses, the Tribunal awarded only a meagre sum of ₹2,000/-. Similarly, towards loss of love and affection, the Tribunal awarded only a meagre sum of ₹25,000/-. In view of the verdicts passed by the

Apex Court, the claimants were entitled for at least ₹25,000/- towards funeral expenses and a higher compensation towards loss of love and affection. The Tribunal awarded ₹25,000/- towards pain and suffering, ₹10,400/- towards hospital expenses and ₹1,000/- towards transportation charge. The compensation awarded by the Tribunal under the above heads can never be termed as exorbitant. In that view of the matter, we find absolutely no grounds to interfere with the compensation awarded by the Tribunal under those heads.

In the result, the appeal fails and the same is dismissed.
No order as to costs.

Sd/-
P.R.RAMACHANDRA MENON, JUDGE

Sd/-
ANIL K.NARENDRA, JUDGE

skj

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P.A to Judge