IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

MACA.No. 2779 of 2012 ()

AGAINST THE AWARD IN OPMV 974/2010 of M.A.C.T.,KOLLAM DATED 06-07-2012

APPELLANT(S)/APPELLANTS:
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1. KAMALAKARAN, S/O.PONNAPPAN, KIRAN NIVAS, PUTHENTHURA P.O NEENDAKARA VILLAGE, KOLLAM DISTRICT.

2. GEETHA DEVI, W/O.KAMALAKARAN, KIRAN NIVAS, PUTHENTHURA P.O NEENDAKARA VILLAGE, KOLLAM DISTRICT.

BY ADVS.SRI.K.SIJU
SMT.BINDU GEORGE

RESPONDENT(S)/RESPONDENTS:
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1. JOY JACOB, S/O.JACOB, VALAYIL HOUSE, KULANGARABHAGOM MURI KARTHURA, CHAVARA P.O., KARUNAGAPPALLY
KOLLAM 691583

2. JAYAKUMAR, S/O.MUTHUKRISHNAN, MUTHUKRISHNA VILASOM PUTHENTHURA, CHAVARA P.O., KARUNAGAPPALLY
KOLLAM - 691583.

3. THE DIVISIONAL MANAGER
THE NEW INDIA ASSURANCE CO.LTD., KOLLAM 691 001

R3 BY ADV. SRI.P.G.GANAPPAN
R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 02-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.
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M.A.C.A. No. 2779 of 2012
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Dated, this the 2nd day of September, 2015

JUDGMENT

Harilal, J.

The appellants are the claim petitioners in O.P.(MV) No. 974 of 2010 on the files of Motor Accidents Claims Tribunal, Kollam. The above claim petition was filed under Section 166 of the M.V. Act, claiming compensation, for the loss suffered by them owing to the death of their only son by name Kiran, in a road traffic accident. According to the appellants, on 30.07.2007 at 09.10 am, while Kiran was riding a motorcycle bearing Registration No. KL 02 6386 through the Kollam-Alappuzha National Highway, when he reached at Puthenthura, a tipper lorry bearing Registration No. KL-13/K-6901 driven by the second respondent, owned by the first respondent and insured with the 3rd respondent came in a rash and negligent manner hit the motorcycle ridden by him and as a result of the accident, he had sustained fatal injuries and succumbed to the said injuries. The accident had occurred due to the rash and negligent driving of the offending vehicle by the second respondent and the respondents are jointly and severally liable to pay compensation to them, for the irretrievable loss suffered by them. They claimed Rs.5,00,000/- as compensation.

2. Though, the first respondent entered appearance and filed vakalath; no written statement was filed. The second respondent remained ex parte and the 3rd respondent, in the written statement, admitted the coverage of policy; but denied the allegations of rashness and negligence levelled against the second respondent. It was also contended that there was a violation of policy conditions and hence the 3rd respondent is not liable to indemnify the first respondent.

3. The evidence adduced from the part of the appellants consists of Exts.A1 to A13 and oral evidence of PW1. After evaluating the aforesaid evidence on record, the Tribunal has passed the impugned Award, granting a total compensation of Rs.3,60,000/- to the appellants, though they claimed Rs.5,00,000/-. The inadequacy of the quantum of compensation is under challenge on various grounds in this Appeal.

4. The learned counsel for the appellants submits that the Tribunal went wrong in adopting the multiplier applicable to the age of the appellants, instead of, taking the multiplier applicable to the

age of the deceased. It is also contended that the quantum of compensation determined by the Tribunal is inadequate and disproportionate with the loss suffered by the appellants. Per contra, the learned counsel for the respondents submits that the compensation awarded by the Tribunal is just and proper and there is no scope for any further interference in Appeal as the Tribunal correctly determined the compensation by taking all the inputs, including the relevant multiplier, in its correct perspective.

5. In view of the rival contentions across the Bar, the first point that arises for consideration is, whether the multiplier adopted by the Tribunal is justifiable or not.

6. Going by the decision rendered by the Apex in **Amrit Bhanu Shali & Ors. Vs. National Insurance Co. Ltd. and Ors. [2012 ACJ 2002]**, it could be seen that the Apex Court has resolved the conflicting views in various decisions and settled the legal position, stating that the multiplier applicable to death case is not that of the dependents, but the multiplier applicable to the age of the deceased has to be taken for reckoning the compensation. But in the impugned Award, the Tribunal has taken the multiplier applicable to the average age of the parents i.e. '11'. At the time of death, the deceased was aged '23' and the multiplier applicable

to him is '18'. Therefore, we are inclined to re-determine the compensation for loss of dependency adopting the said multiplier. Hence the appellants are entitled to get a compensation of Rs.5,40,000 [2500 x 12 x 18]. The Tribunal has already granted Rs.3,30,000/-. So, after giving credit to the amount granted by the Tribunal, the appellant is entitled to get the balance amount of Rs.2,10,000/- under this head as additional compensation.

7. The next point to be considered is whether the appellants are entitled to get any enhancement in the quantum of amount determined under any other heads. Going by the impugned Award, it is seen that the amount claimed by the appellants is only Rs.5,00,000/-. Even though the appellants have not produced any documentary evidence to substantiate the claim that the deceased was an employee and earning Rs.6,000/- per month, the Tribunal has taken a reasonable and realistic view by fixing Rs.5,000/- as monthly salary and determined the compensation on that basis. Thus, the appellants have got a compensation more than the amount which they had claimed in the petition. We find that the total compensation granted under the impugned Award stands in conformity with “Just Compensation” as contemplated under Section 168 of the Motor Vehicles Act.

7. We have gone through the quantum of compensation determined by the Tribunal under various heads and find that the quantum of compensation determined under other heads are just and reasonable and there is no reason to interfere with any of the amounts granted under those heads. Needless to say, the appellants are entitled to get interest for the enhanced compensation at 9% per annum from the date of filing the petition. The third respondent is directed to deposit the compensation within a period of one month from today. It is made clear that the 3rd respondent is at liberty to realise the said amount from the first respondent for violation of the policy conditions.

The Appeal is disposed of.

sd/-
P. R. RAMACHANDRA MENON,
JUDGE

sd/-

K. HARILAL,
JUDGE

kmd