IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

MACA.No. 1025 of 2015 ()

AGAINST THE AWARD IN OPMV 30/2014 of M.A.C.T.,KOZHIKODE DATED 22-11-2014

APPELLANT(S)/APPELLANTS/PETITIONERS:

1. P.J. RADHAMANI, AGED 65 YEARS,
W/O. (LATE) SOMAN

2. S.SEEMA, AGED 36 YEARS
D/O. (LATE) SOMAN

3. S.SHYAMLAL AGED 34 YEARS
S/O. (LATE) SOMAN, ALL ARE RESIDING AT 274(348)
SEEMABHAVAN, KOCHAZHIKATH VEEDU, P.O.PUTHUPPADY
THAMARASSERY, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT(S)/RESPONDENT/3RD RESPONDENT:

THE NATIONAL INSURANCE CO.LTD
DO: NOOR COMPLEX, NEAR SBT, ARAYEDATHUPALAM
MAVOOR ROAD, KOZHIKODE-673001.

R1 BY ADV. SRI.E.M.JOSEPH
BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 13-10-2015, 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. 1025 of 2015
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Dated, this the 13th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

As against the total claim of Rs.6,00,000/-, in respect of a deceased who was a septuagenarian, a sum of Rs.5,32,000/- has been awarded by the Tribunal, which is stated as totally inadequate by his surviving widow aged 65 years and two children having the age of 36 years and 34 years respectively. Hence this appeal for enhancement of the compensation.

2. The accident was on 09.08.2013, when the deceased who was a pedestrian, was knocked down by a car bearing No. **KL 11 AT 9175** owned, driven and insured by the respondents 1 to 3 respectively. The loss was sought to be compensated by filing claim petition before the Tribunal by his widow and children as aforesaid.

3. Nobody was examined on either side. Documentary evidence adduced before the Tribunal consists of Exts. A1 to A8 produced from the part of the claimants. Based on the available

materials on record, the Tribunal arrived at a finding that the accident was occurred only because of the negligence on the part of the 2nd respondent, who was the driver of the car. It was brought in evidence that the deceased was aged above 70 years and hence the proper multiplier would be 5. The Tribunal also arrived at a finding that since the claimants 2 and 3 were grown up children and no evidence was adduced to prove their dependency, only the first petitioner widow could be considered as the dependent of the deceased. Pension records produced before the Tribunal, as discussed in paragraph 11, reveal that the deceased had drawn the last pension @ Rs.11,040/-. After reducing 1/3rd towards the personal expenses, the loss of dependency was worked out as Rs.4,41,600/- [11040 x 12 x 5 x 2/3]. A total compensation of Rs.5,31,600/- rounded to Rs. 5,32,000/- was directed to be satisfied with interest @ 8 % p.a. According to the appellants, this is much on the lower side, hence the appeal for enhancement of compensation.

4. Heard the learned counsel for the appellants as well as the learned standing counsel appearing for the Insurance Company.

5. The learned counsel for the appellants submits that only a

sum of Rs.25,000/- each has been awarded towards the loss of consortium and loss of love and affection, which require to be boosted up at least to some extent. It is stated that the multiplier adopted by the Tribunal is also not correct or proper.

6. The learned counsel for the Insurance Company submits that the pension drawn by the deceased was reckoned in toto and only 1/3rd has been deducted towards the personal expenses, which by itself is not correct. Since the Tribunal has already arrived at a finding that the first appellant alone is entitled to be treated as dependent, 50 % deduction ought to have been made by the Tribunal. So also, the amount of 'family pension' being obtained by the first appellant was also to be deducted, while working out the compensation. In the said circumstances, the Award actually requires to be scaled down, submits the learned counsel for the Insurance Company.

7. It is seen that Award was passed by the Tribunal way back on 22.11.2014. But no appeal is stated as preferred by the Insurance Company challenging the course and proceedings and the quantum of compensation awarded by the Tribunal. In the said circumstances, the only endeavour of this Court is to see

whether the total compensation awarded by the Tribunal could be treated as a 'just' one award under Section 168 of the M.V. Act.

8. It is true that only a sum of Rs.25000/- each was awarded under the head of loss of love and affection and loss of consortium. The amount payable under these heads have a bearing with the age of the deceased/age of the claimants, as the case may be, and it depends upon the longitude of the persons concerned. The compensation payable for the loss of consortium to the widow of a deceased having 90 years at the time of death, leaving the widow of 85 years, may not be the same as the quantum payable in respect of a deceased having 30 years leaving widow of about 25 years. A balance has to be struck, to decide the quantum of compensation under these heads to ensure that it is a 'just' compensation. It remains a fact that the finding of the Tribunal that the appellants 2 and 3 were not dependents of the deceased and that dependency was there only in respect of the first appellant, is not sought to be challenged by the appellants. This being the position, the actual/maximum contribution to the Family would have been 50% of the pension obtained by the deceased. This is apart from the fact that the deceased was a pensioner from

the State service and that by virtue of the Pension Rules, the first appellant would have obtained the requisite extent as 'Family Pension', which has not been considered by the Tribunal. We need not reckon the said element, but the compensation can be worked out, confining the contribution to the family only to an extent of 50%. If such an exercise is done, it may be possible for the Insurance Company to contend that the amount awarded under the head of loss of dependency is on the higher side and not in conformity with the norms in this regard. Eventhough the appellants 2 and 3 are not dependents, considering the fact that they were the children of the deceased, their entitlement to be compensated for the 'loss of love affection' cannot be denied or ignored. This being the position, the probable excess amount towards the contribution of family can be readjusted/redistributed towards the loss of love and affection, and if any residual amount is there, it still can be reallocated to the first appellant under a different head. As such, no deduction or re-fixation of contribution may be warranted with regard to the compensation awarded by the Tribunal. To say the least, this Court finds that the total compensation of Rs.5,32,000/- awarded by the Tribunal as against the claim of Rs.6,00,000/- is sufficient and a 'just' compensation under Section 168 of the MV Act. In the said circumstances, we find no further enhancement is warranted in this appeal. Interference is declined and the appeal stands dismissed.

Sd/-
P. R. RAMACHANDRA MENON,
JUDGE

Sd/-
K. HARILAL,
JUDGE

kmd