IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

MACA.No. 1183 of 2015 ()

AGAINST THE AWARD IN OPMV 210/2013 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE DATED 14-08-2013

APPELLANTS/PETITIONERS:
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1. **ABDUL RAHIMAN, AGED 46 YEARS,**
   ANORAMAL HOUSE, KAITHAPOYIL, PUTHUPADY
   KOZHIKODE.

2. **REMLA, AGED 38 YEARS,**
   W/O.ABDUL RAHIMAN, ANORAMAL HOUSE, KAITHAPOYIL
   PUTHUPADY, KOZHIKODE.

3. **SAJNA, AGED 20 YEARS,**
   D/O.ABDUL RAHIMAN, ANORAMAL HOUSE, KAITHAPOYIL
   PUTHUPADY, KOZHIKODE.

4. **MUHAMMED SHAHIR, AGED 18 YEARS,**
   S/O.ABDUL RAHIMAN, ANORAMAL HOUSE, KAITHAPOYIL
   PUTHUPADY, KOZHIKODE.

5. **SHAHALU RAHIMAN (MINOR), AGED 14 YEARS,**
   S/O.ABDUL RAHIMAN, ANORAMAL HOUSE, KAITHAPOYIL
   PUTHUPADY, KOZHIKODE. (5TH MINOR APPELLANT IS REPRESENTED BY FATHER AND GUARDIAN 1ST APPELLANT)

BY ADV. SRI.K.MUHAMMED SALAHUDHEEN

RESPONDENT(S)/RESPONDENTS:
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1. **K.ABDUL SALIM**
   S/O.ABOOBACKER, KURUKKAN KUNNUMMAL HOUSE
   ANAPPARA P.O., KUNNAMANGALAM, KOZHIKODE-673 571.

2. **BINU, AGED 35 YEARS,**
   S/O.SREEDHARAN, KOLOOR HOUSE, KIDANGANAD NOOL PUZHA
   KOZHIKODE-673 572.

3. **HDFC**
   ERGO GENERAL INSURANCE CO.LTD., YMCA ROAD
   KOZHIKODE-673 004.

R3 BY ADV. SRI.K.B.RAMANAND

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vpv

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.
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M.A.C.A.No.1183 of 2015
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Dated this the 17th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in O.P.(M.V.)No.210 of 2013 on the file of the Motor Accidents Claims Tribunal, Kozhikode. They are the father, mother, sister and two minor brothers respectively of Salman Faris, a boy aged 12 years, who sustained serious injuries in a motor accident involving a stage carriage bus owned by the first respondent, driven by the second respondent and insured by the third respondent and succumbed to injuries on the same day while undergoing treatment at Medical College Hospital, Kozhikode. The deceased was riding a bicycle when the accident took place. Before the Tribunal, the appellants contended that the accident took place on account of the rash and negligent driving of the stage carriage bus by the second respondent. The appellants had in the claim petition prayed for an award directing the respondents to pay to them the sum of Rs.6,00,000/- as compensation together with interest and costs.

2. Upon receipt of summons, respondents 1 and 3 entered appearance and filed separate written statements. The second

respondent did not enter appearance and he was set exparte. The main contention raised by the first respondent, the owner of the stage carriage bus was that his driver was not negligent. He also contended that the motor vehicle involved in the accident was on the date of the accident covered by a valid policy of insurance issued by the third respondent. The third respondent filed a written statement admitting the policy but denying its liability to pay compensation. It was contended that there was no negligence on the side of the second respondent. The insurer also contended that the compensation claimed is exorbitant and excessive.

3. Before the Motor Accidents Claims Tribunal, no oral evidence was adduced on either side. However on the side of the claimants Ext.A1 F.I.R., Ext.A2 scene mahazar, Ext.A3 postmortem certificate, Ext.A4 family membership certificate and Ext.A5 final report in Crime No.411/2012 of Thamarassery Police Station were produced and marked. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the rash and negligent driving of the bus by the second respondent. The Motor Accidents Claims Tribunal awarded a total sum of Rs.2,44,500/- as compensation consisting of the sum of Rs.2,40,000/- awarded

under the head loss of dependency, Rs.2,000/- towards funeral expenses and Rs.2,500/- under the head loss to the estate. The third respondent insurer was directed to deposit the said sum together with interest at 8% per annum from the date of petition till the date of deposit along with proportionate costs. The claimants have, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

4. We heard Sri.Mohammad Salahudhin, learned counsel appearing for the appellants and Sri.K.B.Ramanand, learned counsel appearing for the third respondent insurer. We have also gone through the pleadings and the materials on record. The impugned award discloses that the Motor Accidents Claims Tribunal has taken the notional annual income of the deceased, who was a VIth standard student aged 12 years, as Rs.30,000/-. The Tribunal has also deducted 1/3rd of the said amount towards personal expenses. However instead of awarding the sum of Rs.20,000 X 15 = Rs.3,00,000/- under the head loss of dependency, the Tribunal has awarded only the sum of Rs.2,40,000/-. The calculation made by the Tribunal is in our opinion erroneous. If Rs.30,000/- is taken as the notional income of the deceased and 1/3rd is deducted, the

compensation payable in the case of death of a 12 year old boy would be Rs.20,000 X 15 = Rs.3,00,000/-. We accordingly award to the appellants/claimants an additional amount of Rs.60,000/- as compensation under the head loss of dependency.

5. Ext.A2 postmortem certificate discloses that the deceased died on account of the head injury sustained by him. The accident took place at 12 noon. The victim died a few hours thereafter while undergoing treatment at Medical College Hospital, Kozhikode. The Tribunal has not awarded any amount as compensation under the head pain and suffering. It is now settled that even in the case of instantaneous death, a nominal amount of Rs.10,000/- can be awarded as compensation under the head pain and suffering. We accordingly award to the appellants/claimants the sum of Rs.10,000/- as compensation under the head pain and suffering. The Motor Accidents Claims Tribunal has also not likewise awarded any amount towards transportation expenses and other incidental expenses which the father of the victim would have certainly incurred to take the injured to the hospital and to bring his body home. He would have also had to incur other unforeseen expenses. In such circumstances, we are of the opinion that a sum of Rs.2,500/- should be awarded towards

expenses for transport, damage to clothing and other incidental expenses. We accordingly award to the appellants/claimants the sum of Rs.2,500/- under the head transportation expenses. The Motor Accidents Claims Tribunal has awarded only the sum of Rs.2,000/- towards funeral expenses. The Apex Court has in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)] held that in the absence of evidence to the contrary for higher expenses, atleast an amount of Rs.25,000/- should be awarded towards funeral expenses. The appellants/claimants are therefore entitled to be awarded an additional amount of Rs.23,000/- under the head funeral expenses. The Motor Accidents Claims Tribunal has likewise awarded only the sum of Rs.2,000/- as compensation under the head loss to the estate. On a modest estimate, we are of the opinion that a nominal amount of Rs.10,000/- should be awarded under that head. We accordingly award an additional compensation of Rs.8,000/- under the head loss to the estate. The Motor Accidents Claims Tribunal has not awarded any amount as compensation to the parents of the deceased under the head loss of love and affection. The Apex Court has in **Amrit Bhanu Shali and Others v. National Insurance Company Limited and Others** [(2012) 11 SCC 738] awarded to the parents of a boy aged 26 years, the sum of Rs.50,000/- each. Taking the cue from the decision of the Apex Court, we award the sum of Rs.50,000/- each to appellants 1 and 2 namely the parents of the deceased as compensation under the head loss of love and affection.

We accordingly allow the appeal and award an additional compensation of Rs.2,03,500/- to the appellants/claimants over and above the compensation awarded by the Motor Accidents Claims Tribunal. The third respondent insurer shall deposit the said sum together with interest at 9% per annum from the date of petition till the date of deposit, within two months from today. Upon such deposit being made, the entire amount deposited shall be released to the appellants/claimants. No costs.

Sd/-

P.N.RAVINDRAN
JUDGE

Sd/-
ANU SIVARAMAN
JUDGE

/true copy/

P.A. To Judge

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