IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

MACA.No. 1296 of 2007 ( )

AGAINST THE AWARD IN OPMV 260/2005 of M.A.C.T OTTAPPALAM DATED 22-09-2006

APPELLANT(S)/PETITIONERS 1,3 & 4::
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1. KAMALAM, W/O.LATE UNNIKRISHNAN,
   AGED 40 YEARS, NOW RESIDING AT PATTATH PUTHEN, VEEDU
   VADAKKE VAVANOOR POST, KOOTTANAD, OTTAPALAM TALUK
   PALAKKAD DISTRICT.

2. VINITHA, D/O.LATE UNNIKRISHNAN,
   AGED 19 YEARS, NOW RESIDING AT PATTATH PUTHEN, VEEDU
   VADAKKE VAVANOOR POST, KOOTTANAD, OTTAPALAM TALUK
   PALAKKAD DISTRICT.

3. MADHAVI AMMA, W/O. LATE SANKARAN
   EZHUTHACHAN, AGED 72 YEARS, NOW RESIDING AT
   PATTATH PUTHEN VEEDU, VADAKKE VAVANOOR POST
   KOOTTANAD, OTTAPALAM TALUK, PALAKKAD DISTRICT.

   BY ADVS.SRI.O.P.NANDAKUMAR
   SRI.V.A.AJAI KUMAR

RESPONDENT(S)/RESPONDENTS 1 TO 3 AND 2ND PETITIONER::
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1. USHA CHANDRAN, W/O.CHANDRAN, AGE NOT
   KNOWN, PATTATH PUTHEN VEEDU, THEKKE VAVANNUR POST
   KOOTTANAD, OTTAPPALAM TALUK, PALAKKAD DISTRICT.

2. ANIL.M.P., S/O.THARUVAN, AGED ABOUT
   25 YEARS, MANGATTUPARAMBIL HOUSE, KOOTTANAD POST
   OTTAPALAM TALUK, PALAKKAD DISTRICT.

3. THE ORIENTAL INSURANCE COMPANY LIMITED,
   SHOBHA, TSM COMPLEX, RAILWAY STATION ROAD
   PALAKKAD.

4. VIDYADHARAN, S/O.LATE UNNIKRISHNAN,
   AGED 22 YEARS, NOW RESIDING AT PATTATH PUTHEN VEEDU
   VADAKKE VAVANOOR POST, KOOTTANAD, OTTAPALAM TALUK
   PALAKKAD DISTRICT.

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON, J.

&

BABU MATHEW P.JOSEPH, J.

M.A.C.A .No.1296 of 2007

Dated this the 30th day of July, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Inadequacy of the compensation awarded by the Tribunal in a claim preferred under section 163-A of the M.V Act is not sought to be challenged in this appeal.

2. Husband of the first appellant, father of the 2nd appellant and son of the 3rd appellant met with a road traffic accident on 11.08.2004. At the time of accident, the deceased was travelling in a tractor bearing No.KL/9F-8783 as a 'paid helper' of the 2nd respondent. While so, allegedly

because of the rash driving and negligence on the part of the driver, the victim was thrown out by virtue of which serious inujuries were caused to the said person, who succumbed to the same leading to the claim preferred by the legal heirs.

3. The claimants contended that the deceased was an agriculturist, earning a sum of ₹3,300/- per month. It was also stated that he was travelling as a helper of the 2nd respondent, as per instruction given by the owner of the vehicle. A total sum of ₹5lakhs was claimed as compensation by them. The respondents 1 and 2 before the Tribunal tried to contest the case stating that there was no negligence on the part of the 2nd respondent. The factual particulars as to the income and dependency were also disputed. The Insurance Company filed counter affidavit stating that there was 'no policy' to cover the deceased. It was specifically contended that the coverage was only in respect of the driver of the vehicle and that no extra

premium was collected to cover the risks of passengers. The seating capacity of the tractor was only 'one' and the deceased was travelling only as a gratuitous passenger and as such, no liability could be mulcted upon the Company to pay any amount to the claimants. After considering the facts and figures, the Tribunal passed an award granting a total compensation of ₹2,01,500/- out of which a sum of ₹1,92,000/- was fixed as loss of dependecy, reckoning ₹2,000/- as monthly income and taking a multiplier of 8. This was directed to be satisfied by the insurer.

3. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the insurance company. Service is to be completed only in respect of the 4th respondent, who was one among the claimants before the Tribunal. It is stated that the said claimant is not available in India and has been shown as '4th respondent' only as a proper party. We do not find it necessary to complete the service of notice to the 4th

respondent and notice to the 1st respondent driver is dispensed with.

4. Even though the insurance company had taken up a contention that there was no coverage under the policy, it remains a fact that the award passed by the Tribunal has become final, having not caused to challenge the finding and fixation of liability. It is conceded that no appeal was preferred by the insurance company. In the said circumstance, this Court does not find it necessary to go into the question whether coverage could have been there or not, in respect of a person travelling in the tractor, where no seat was provided for carrying any passenger or as to the factum of non-collection of premium in this regard. The only point to be looked into is whether the award passed by the Tribunal, which has already become final, is in terms of the mandate under seciton 163-A.

5. Even though, no proper evidence was adduced to

prove the income, the Tribunal has reckoned ₹3,000/- as the monthly income. We do not find any fault with the course adopted by the Tribunal so far as the deceased was maintaining his family consisting of wife, children and mother. The Tribunal, however, reckoned the multiplier only as '8'. The age of the deceased was 55 years. Going by the 'second schedule', in respect of a person aged 55 years, the appropriate multiplier is '11'. This being the position, on reworking the compensation as above, the compensation for loss of dependency comes to ₹2,64,000/-, in place of ₹1,92,000/- (3000 x 12 x2/3 x11). As such, a balance amount of Rs.75,000/- is to be paid by the insurance company to the appellants. The appeal is disposed of, declaring the eligibility of the appellants to get the said additional compensaton as well, which shall be deposited by the insurance company within one month with interest @ 9% per annum from the date of claim petition preferred before the Tribunal.

6. It is brought to the notice of this Court that interest was awarded by the Tribunal, only in case of failure to have deposited the awarded amount within the stipulated time. As a matter of fact, by virtue of the mandate under section 171 and also in view of the nature of the claim, the claimants were entitled to have the due amount satisfied with interest from the date of claim petition. The deficit amount towards interest payable, in respect of the amount awarded by the Tribunal (from the date of petition till the date of deposit) shall also to be satisfied by the insurance company with interest @ 9% per annum from the date of claim petition.

The appeal stands disposed of accordingly.

P.R.RAMACHANDRA MENON, JUDGE

BABU MATHEW P.JOSEPH, JUDGE

sks/-