IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

MACA.No. 15 of 2009 ( )

AGAINST THE AWARD IN OPMV 1965/2005 of M.A.C.T.,PERUMBAVOOR DATED 3/10/2008

APPELLANTS/PETITIONERS IN OP(MV):

1. NARAYANAN, AGED 54 YEARS
S/O.VELAYUDHAN, RAMESH BHAVAN, ANAKKALLU KARA
MALAMPUZHA., (F/O. DECEASED RAMESH)

2. MANI, AGED 43 YEARS,
W/O.NARAYANAN, RAMESH BHAVAN, ANAKKALLU KARA
MALAMPUZHA., (M/O. DECEASED RAMESH)

3. SURESH, AGED 31 YEARS,
S/O.NARAYANAN, RAMESH BHAVAN, ANAKKALLU KARA
MALAMPUZHA., (B/O. DECEASED RAMESH)

4. SUNITHA, AGED 26 YEARS,
D/O.NARAYANAN, RAMESH BHAVAN, ANAKKALLU KARA
MALAMPUZHA., (S/O. DECEASED RAMESH)

5. REGANI, AGED 24 YEARS,
D/O.NARAYANAN, RAMESH BHAVAN, ANAKKALLU KARA
MALAMPUZHA., (S/O. DECEASED RAMESH)

BY ADV. SRI.T.K.SAJEEV

RESPONDENTS/RESPONDENTS IN OP(MV):

1. K.P. SALIM, S/O GOPALAKRISHNAN NAIR
ARUN NIVAS, ONAKKOOR, NEAR ONAKKOOR KARAYOGAM
PIRAVAM, ERNAKULAM DISTRICT.

2. THE MANAGING DIRECTOR,
K.S.F.D.C.THIRUVANANTHAPURAM.

3. KERALA STATE INSURANCE DEPARTMENT,
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.P.GOPALAKRISHNAN NAIR
R3 BY ADV. GOVERNMENT PLEADER SRI.R.PADMARAJ
R2 BY ADV. SRI.A.SUDHI VASUDEVAN, SC, KSFDC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.

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M.A.C.A.No.15 OF 2009

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Dated this the 8th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimants aggrieved by the inadequacy of compensation.

2. The appellants 1 and 2 are the parents of deceased Sri.Ramesh and appellants 3 to 5 are the siblings. The accident occurred on 4.9.2005. He was riding a motor cycle bearing Reg.No.KL-7/ N 6086 through the western side of M.C.Road and at the place of occurrence a mini bus bearing Reg.No. KB V-9960 which was driven by the first respondent in a rash and negligent manner and was coming from the opposite direction dashed against the motor cycle. Serious injuries were caused to him and on the way to the hospital, he died. It was claimed by the appellants that the deceased was aged 24 at the time of the accident and had the monthly income of Rs.4,500/- as he was working in an engineering workshop.

3. Before the Tribunal, documentary evidence was adduced and after considering various aspects, the Tribunal has granted a total compensation of Rs.1,97,840/-. We find from the award of the Tribunal that after considering the age of the parents and the siblings by assessing Rs.2500/- as the monthly income and by deducting 1/3 towards personal expenses, the remaining amount of Rs.1670/- has been treated as multiplicand. The same is calculated upto the age of 28 of the deceased namely the marriageable age and then the dependency has been reduced to half namely Rs. 835/-. Accordingly a total sum of Rs.170340/- has been granted as the dependency compensation.

4. The Tribunal has fixed the compensation in the following manner which includes transportation expenses, pain and suffering, loss of love and affection, loss of estate and funeral expenses :

Head of claim	***Amount Awarded in rupees***
Loss of dependency	170340
Transportation expenses	2000
Pain and suffering	5000
Loss of love and affection	15000
Loss of estate	2500

Head of claim	***Amount Awarded in rupees***
Funeral expenses	3000
Total	197840

5. The learned counsel for the appellant submitted that in the light of the principles stated by the Apex Court in **Sarla Verma v. Delhi Transport Corporation (2010(2) KLT 802 (SC)**, the normal multiplier will be 18. It is also submitted that since the deceased was working in a workshop, the amount claimed as the monthly income of Rs. 4,500/- is reasonable. It is also submitted that the Tribunal has not awarded anything towards future prospects of the deceased. Further, the learned counsel submits that the amounts awarded towards loss of love and affection, loss of estate, funeral expenses and pain and suffering are also totally inadequate.

6. The learned counsel for the contesting respondent submitted that the amount awarded is reasonable.

7. The first aspect is whether the monthly income claimed is just and reasonable. What we find is that the deceased was working in

an engineering workshop as a welder. The accident is of the year 2005 and the monthly income claimed being only @ Rs.4,500/-, we find that the same is just and reasonable. The deceased was travelling in his own motor cycle which will show that he had been earning very good income for enabling him to own such a vehicle also. Therefore the monthly income calculated @ Rs.2500/- per month is too low. Going by the decision of the Apex Court in **Syed Sadiq and others v. Divisional Manager, United India Insurance Company (AIR 2014 SC 1052)**, wherein the Apex Court was of the view that the Tribunal/Court will be justified in accepting the claim of the claimants if it is not exorbitant, we will be justified in accepting Rs.4,500/- as the monthly income. Apart from the same, documentary evidence cannot be insisted in such an occupation also. The multiplier going by the Sarla Vama's case (supra) is 18 and we adopt the same. He was a bachelor and 50% will have to be deducted towards personal expenses. As far as funeral expenses are concerned, the Tribunal has granted only Rs.3,000/- which we enhance to Rs.25,000/-. The appellants 1 and 2 have lost their son at the age of 24. Appellants 1 and 2 have really lost the care and protection of the son and the other siblings have lost their brother at the younger age. These are aspects which can be considered by the court while granting compensation. The Tribunal has granted compensation of Rs.15,000/- towards loss of love and affection. In the light of the fact that the parents are deprived of the care and company of the deceased and the love and and affection, we fix an amount of Rs.1,00,000/- towards the said head. As far as the amount awarded towards loss of estate, it is totally meagre. We will be justified in fixing an amount of Rs.25,000/- towards loss of estate also.

8. Accordingly, the compensation is refixed in the following manner :

Head of claim	***Amount Awarded in rupees***
Loss of dependency	486000 (4500 x 12 x 18 x 50%)
Transportation expenses	2000
Pain and suffering	10000
Loss of love and affection	100000
Loss of estate	25000

Head of claim	***Amount Awarded in rupees***
Funeral expenses	25000
Total	648000 (Rupees six lakhs forty eight thousand only)

9. The enhanced amount will carry interest @ 9% per annum from the date of petition. Since there is a valid insurance policy, we direct the Insurance Company to deposit the amount within three months from the date of receipt of a copy of this judgment. The amount will be shared between the appellants in the ratio as prescribed by the Tribunal. The court fee required for the amount awarded will be realised before disbursing the amount awarded.

The appeal is accordingly allowed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

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