IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

MACA.No. 1503 of 2015 ()

AGAINST THE AWARD IN OPMV 616/2012 of M.A.C.T.,PERUMBAVOOR DATED 30-09-2014

APPELLANTS/PETITIONERS IN O.P(MV) 616/2012):

1. ANNIE AGED 39 YEARS
W/O. JERRY, VALLATHUKARAN HOUSE, PANTHAKKAL
PADUAPURAM P.O, PIN 683 582

2. ANTONY JERRY (MINOR) AGED 17 YEARS
S/O. JERRY, VALLATHUKARAN HOUSE, PANTHAKKAL
PADUAPURAM P.O PIN 683 582
REPRESENTED BY HIS MOTHER ANNIE
W/O. JERRY, AGED 39 YEARS, VALLATHUKARAN HOUSE
PANTHAKKAL, PADUAPURAM P.O
PIN 683 582 AS HIS GUARDIAN AND NEXT FRIEND

3. ATHUL V.J (MINOR) AGED 10 YEARS
S/O. JERRY, VALLATHUKARAN HOUSE, PANTHAKKAL
PADUAPURAM P.O
PIN 683 582
REPRESENTED BY HIS MOTHER ANNIE
W/O. JERRY, AGED 39 YEARS, VALLATHUKARAN HOUSE
PANTHAKKAL, PADUAPURAM P.O
PIN 683 582 AS HIS GUARDIAN AND NEXT FRIEND

BY ADVS.SRI.REJI GEORGE
SRI.GOPAKUMAR G. (ALUVA)
SMT.ANUPAMA JOHNY

RESPONDENT/(RESPONDENT NO 2 IN O.P (MV) 616/2012):

ICICI LOMBARD GENERAL INSURANCE CO.LTD.
ICICI LOMBARD HOUSE, 414, VEER SAVARKAR MARG,
NEAR SIDDHI VINAYAK TEMPLE, PRABHADEVI, MUMBAI 400 025

BY ADV. SRI.R.AJITH KUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.R. RAMACHANDRA MENON & ANIL K. NARENDRAN, JJ.

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M.A.C.A.No. 1503 of 2015

Dated this the 13th day of November, 2015

JUDGMENT

RAMACHANDRA MENON,J

Inadequacy of the compensation awarded in respect of the death of the husband of the first appellant and the father of the appellants 2 and 3 is the subject matter of challenge in this appeal.

2. The accident was occurred on 8.5.2012. The deceased was proceeding along the road, when the car bearing No.KL-8X-6059 owned and driven by the first respondent and insured by the second respondent before the Tribunal, knocked him down causing fatal injuries leading to his death. This was sought to be compensated by filing claim petition before the Motor Accidents Claims Tribunal Perumbavoor.

3. The owner and driver of the vehicle chose to remain ex-parte. The respondent herein, who was the second respondent before the Tribunal filed written statement and contested the matter on general grounds, as no statutory ground of defence as to the violation of provisions of policy condition was involved. It also remains a fact that, no oral evidence was adduced from either side and the documents produced as Exts. A1 to A8 alone formed the evidence available before the Tribunal. After hearing both the sides, the

Tribunal arrived at a finding that the accident was caused solely because of the negligence on the part of the driver of the vehicle and proceeded to fix the liability accordingly.

4. Coming to the quantum of compensation to be awarded, the case of the applicant before the Tribunal was that, the deceased was an able bodied youth of 38 years and that he was a coolie earning a monthly income of ₹25,000/-. Making a reference to the age factor of the deceased, as given in paragraph 22 of the award, the Tribunal observed that no material was produced to substantiate the age, that he was less than 40 years. As per the postmortem report and such other police records, the Tribunal observed that the age of the deceased was 42 years and in such circumstance, the appropriate multiplier was adopted as '14', as stated in paragraph 23 of the award. The claimants did not adduce any evidence with regard to the monthly income and in the said circumstance, notional income of ₹5,000/- was reckoned for working out the loss of dependency. It was accordingly, that various amounts were awarded by the Tribunal granting a total compensation of ₹8,03,780/-, which was directed to be satisfied with interest @ 8% per annum, ordering the manner of appropriation, as given in paragraph 29. This in turn is sought to be enhanced by filing this appeal.

5. Heard the learned counsel for the appellants as well as the learned Standing Counsel appearing for the Insurance Company at length.

6. It is true that no evidence was adduced by the claimants with regard to the occupation or monthly income. But the fact remains that the accident occurred was by the middle of the year 2012. It is also pointed out that, the deceased was maintaining a family consisting of his wife and two minor children aged 14 and 7 years at that point of time. This being the position, considering the economic conditions prevailing at the date of accident and the money value, this Court finds that some variation requires to be made as to the multiplicand. We find it appropriate to reckon the monthly income of the deceased as ₹7,000/- and effect the calculations accordingly. On re-working of the compensation payable under the head loss of dependency, the figure comes to ₹7,000/-X12X14X2/3 = ₹7,84,000/-. After giving credit to the amount awarded by the Tribunal, the balance under this head comes as ₹**2,23,720**/-.

7. The amounts awarded by the Tribunal under the relevant heads forming part of paragraph 28 are in the following manner.

Sl.No	**Head of claim compensation for**	**Amount claimed (in Rupees)**	**Amount awarded (in Rupees)**	**Basis-vital details in a nut shell**
1	Transportation expense	25000	5000	
2	Damage to clothes	10000	1000	
3	Loss of dependency	1000000	560280	(Rs.5000x2/3x 12x14)
4	Loss of consortium	500000	100000	Wife aged 37
5	Loss of estate	1000000	2500	
6	Loss of love & affection	500000	100000	
7	Funeral expense	200000	25000	
8	Pain and suffering	50000	10000	Died on the same day
9	Loss of future prospects	200000	nil	
		6785000 limited to 2500000	803780	Rs.803780/- along with interest @8% p.a

8. It is seen that the Tribunal has awarded a sum of ₹1,00,000/- as loss of consortium to the first appellant, a sum of ₹1,00,000/- towards loss of love and affection and a sum of ₹25,000/- towards funeral expenses, which appears to be in conformity with the prescription laid down by the Apex Court as per the decision reported in **Rajesh and Others v. Rajbir Singh and Others** 2013(3) KLT 89 (SC),. This Court finds that, adequate amounts have been awarded under the other relevant heads as well, which do not require any change.

9. In the above circumstance, the balance compensation payable comes to ₹**2,23,720**/-, which shall be satisfied with interest at

the rate of 9% per annum from the date of petition, till satisfaction. Since the policy is admitted, the respondent Insurance Company is directed to deposit the said amount within one month from today.

The appeal is disposed of.

P.R. RAMACHANDRA MENON,
JUDGE

ANIL K. NARENDRAN,
JUDGE

kp/-