IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

MACA.No. 1649 of 2015 ()

AGAINST THE AWARD IN OPMV 1583/2012 of M.A.C.T.,KOTTAYAM DATED 30-01-2015

APPELLANT(S)/PETITIONER:

O.V.VARGHESE
OTTATHYCAL HOUSE, PUTHUPPALLY P.O., KOTTAYAM-686011.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA

RESPONDENTS/RESPONDENTS:
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1. JOBY SCARIA,
   VETTUKUZHIYIL HOUSE, PUTHUPPALLY P.O., ERIKADU KARA
   KOTTAYAM-686011.

2. SAJU VARGHESE
   OTTATHYCAL HOUSE, PUTHUPPALLY P.O., KOTTAYAM-686011.

3. THE NATIONAL INSURANCE CO. LTD.
   KOTTAYAM-686001.

R3 BY ADV. SMT.DEEPA GEORGE
R BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A. No. 1649 of 2015

Dated this the 10th day of December, 2015

JUDGMENT

RAMACHANDRA MENON,J

Inadequacy of the compensation awarded by the Tribunal in respect of the demise of the mother of the appellant herein, made him to approach this Court by way of appeal.

2. The accident was on 2.11.2011. The deceased was travelling as a pillion rider on the motor cycle bearing No.KL 5/AA 6355 driven by the first respondent, owned by the second respondent and insured by the third respondent before the Tribunal. When the vehicle reached the spot of occurrence, the motor cycle overturned because of the alleged rash and negligent driving by the first respondent, causing fatal injuries to the deceased leading to her death occurred on 17.11.2011. This led to the claim petition filed before the Tribunal. No statutory ground of defence was available and as such, the matter was contested by the Insurance Company, raising general grounds. The only evidence before the Tribunal consists of Exts. A1 to A9 produced from the part of the claimant and no oral evidence was adduced from either side. Placing reliance on the police records, the Tribunal arrived at a finding that the accident was only because of the negligent driving of the rider of the motor cycle.

3. The case projected before the Tribunal was that the deceased was working as a 'tailor' and was earning a sizable income to an extent of ₹8,000/- per month. But observing that no evidence was adduced in this regard, a sum of ₹4,500/- was reckoned as the notional monthly income for working out the compensation. The version of the appellant was that the deceased was aged 54 years, at the same time conceding that the claimant/appellant herein was aged 42 years. After making a reference to the available documents and also the undisputed fact as to the age of the appellant/claimant, the Tribunal found that the age of the deceased was above 60 years. Though the IInd Schedule provides for a multiplier in such cases to an extent of '5', it was reckoned as '9', to award the compensation by the Tribunal. It was accordingly, that a sum of ₹3,24,000/- was awarded as loss of dependency and granting amounts under other heads, a total compensation of ₹6,17,500/- was ordered to be satisfied with interest at the rate of 8.5% per annum from the date of petition. This is sought to be enhanced in this appeal.

4. Heard the learned counsel for the appellant as well as the learned counsel for the Insurance Company.

5. The amounts awarded by the Tribunal under different heads as given in paragraph 9 of the Award are in the following terms.

Sl. No.	*Head of claim*	*Amount claimed(₹)*	*Amount awarded(₹)*	*Basic vital details in a nut shell*
1	Loss of earnings	8000	nil	Other heads allowed
2	Partial loss of earnings	2000	nil	......do.....
3	Transport to hospital	3000	3000	In view of the hospitalisation
4	Extra nourishment	1000	1000	In view of the IP treatment
5	Damage to clothings	500	500	Nominal amount
6	Funeral expenses	50000	25000	In view of the decision reported in 2013 ACJ 1403
7	Medicines and treatment	300000	229000	Relying on Ext.A4 series
8	Loss of dependency	600000	324000	Taking the multiplier as '9'
9	Pain and suffering	75000	15000	In view of the pain suffered by the victim before her death.

The quantum of compensation awarded by the Tribunal is stated as excessive by the learned counsel for the Insurance Company, contending that no enhancement is required under any circumstance. Particular reference is made to the compensation awarded towards loss of dependency, despite the lack of any evidence and further that the appellant-claimant himself was aged 42 years, leading an independent life of his own.

6. The notional monthly income has been fixed by the Tribunal as ₹4,500/-. It is true that no positive evidence is there to show the

avocation of the deceased. But it has to be borne in mind that the accident was in the year 2011. Considering the age of the deceased, the prevailing economic situation as on the date of the accident and the cost of living index, the income could have been considered by the Tribunal on a higher platform. While examining the quantum of compensation awarded, the figures can be worked out in another manner as well. Even though it could be said that 50% of the income should have been treated as personal expense, the remaining 50% would have been available either as contribution to family or it should have been earmarked as part of estate. The modified income to be reckoned under such circumstance, according to us, is ₹6,000/- per month and if the calculation is made accordingly, the figure comes to ₹6,000X12X50/100X9= ₹3,24,000/-. The amount awarded by the Tribunal reckoning ₹4,500/- and deducting only 1/3rd towards personal expenses, is: ₹4,500X12X1/3X9 = ₹3,24,000/-. There is no difference at all and as such, we do not find it necessary to hold that the compensation awarded by the Tribunal under the above head is excessive in any manner and the same does not require any variation.

7. Coming to the sustainability of figures awarded under different heads, it is seen that the accident occurred was on 2.11.2011, whereas the death occurred was on 17.11.2011. No amount has been awarded towards bystander's expenses. We find it

appropriate to award a sum of ₹3,000/- under this head. Pain and suffering is seen compensated only to an extent of ₹15,000/-. We award a further sum of ₹10,000/- under this head. Only a sum of ₹10,000/- has been awarded towards loss of love and affection. Way back in the year 2013, the Apex Court had occasion to consider the extent of compensation payable under this head, as per decision reported in **Rajesh and Others v. Rajbir Singh and Others** 2013(3) KLT 89 (SC), wherein it has been held that it shall be at the rate of ₹1,00,000/-. But the age of parties concerned was entirely different. Subsequently, a Division Bench of this Court considered the position with reference to the aforesaid decision and as per the verdict reported in **Valsamma v. Binu Jose** 2014 (1) KLT 10, it has been held that the compensation payable for loss of love and affection as in the case of compensation for loss of consortium, it has to be with reference to the age of the deceased and the age of the claimants as well. Striking a balance, we find that the appellant is entitled to have compensation for love and affection to an extent of ₹50,000/-. We award the same accordingly. Giving credit to the sum of ₹10,000/- already awarded, the balance comes to ₹40,000/-.

In the above circumstance, the total balance compensation payable comes to ₹**53,000**/- which shall be satisfied with interest at the rate of 9% per annum from the date of petition filed before the Tribunal, till satisfaction. Since the policy is admitted, we direct the Insurance Company to satisfy the said amount within 'one month' from the date of receipt of a copy of this judgment. Appeal stands allowed to the said extent. No costs.

P.R. RAMACHANDRA MENON,
JUDGE

ANIL K. NARENDRAN,
JUDGE

kp/-