IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

MACA.No. 1504 of 2013 ()

AGAINST THE AWARD IN OPMV 253/2006 of M.A.C.T., ATTINGAL
DATED 28-02-2013
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APPELLANT(S)/APPLICANT NO. 2 & 3 :
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1. **ANNESA**
   SANTHI BHAVAN, MUDAPURAM.P.O., CHIRAYINKIL
   THIRUVANANTHAPURAM.

2. **AFTHAB**
   SANTHI BHAVAN, MUDAPURAM.P.O., CHIRAYINKIL
   THIRUVANANTHAPURAM.

BY ADVS.SRI.R.T.PRADEEP
SRI.J.ROBINSON

RESPONDENT(S):
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1. **ANIL**
   S/O. ARAVINDAKSHAN NAIR, KOLLETHU HOUSE, 7/221
   KOOVAPPADY, ERNAKULAM-683544.

2. **THE DIVISIONAL MANAGER,**
   THE NATIONAL INSURANCE CO. LTD. FLAT NO. 101-106 N-1
   BMC HOUSE, CANNAUGHT PLACE
   NEW DELHI-110001.

R2 BY ADV. SRI.A.A.MOHAMMED NAZIR
R BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VS

T.R.RAMACHANDRAN NAIR, &
K.P.JYOTHINDRANATH, JJ.

M.A.C.A.No.1504 of 2013

Dated this the 31st day of August, 2015

JUDGMENT

T.R.Ramachandran Nair, J.

This appeal is filed from the judgment and decree in OP(MV)No.253/2006 by the Motor Accidents Claims Tribunal, Attingal.

2. The appellants are the parents of the deceased Arshad, who died in a motor vehicle accident occurred on 26.11.2005, when he was riding a motor cycle bearing Reg.No.KL-16/B-9143 through the Kazhakuttom – Chiranyinkeezh public road. The offending vehicle is a Maruthi car bearing Reg.No.KL-07/AD-6953 driven by the first respondent.

3. The application was filed under Section 163A of the Motor Vehicles Act. The Tribunal has fixed a total compensation of Rs.4,12,500/- and on the finding that

40% of the contributory negligence is on the part of the deceased, compensation has been reduced to Rs.2,47,500/-. This appeal is confined to the balance amount.

4. We have heard the learned counsel for the appellant and the learned counsel for the Insurance Company and perused the records.

5. The learned counsel for the appellant submitted that the Tribunal has fixed contributory negligence of 40% on the deceased, namely on two grounds.

(i) The deceased has not having a valid licence to driven motor cycle and,

(ii) The post mortem certificate has shown smell of alcohol.

6. With regard to the first one, it is submitted that the Tribunal, after perusing Ext.A12, was of the view that the entry in respect of two wheeler vehicle licence has been cancelled.

7. The learned counsel for the Insurance Company submitted that the said finding is rendered after verifying the licence.

8. We had called for the records and perused Ext.A12. From the said record, it can be seen that even though, initially three items namely, Motor cycle without gear, motor cycle with gear, invalid carriage were struck off as against motor cycle with gear, tick marks have been shown on both ends of the entry. The next one is light motor vehicle for which also the licence is granted. But we find from same Page No.5 that at the top it is written as LMV + M/Cycle (At the bottom of the page also the same entry is there). Apart form the same, as against the entry light motor vehicle '+' is also added. Therefore it goes to show that he was having a licence to driven light motor vehicle + motor cycle. The licensing authority has applied its mind by putting the entry LMV + M/Cycle in the top and bottom portion. Therefore, the finding by the Tribunal cannot be sustained.

9. As far as Ext.A13 post mortem certificate is concerned, what is stated is that stomach contained unidentifiable food particles and brownish fluid having alcohol like smell, mucosa was congested. It will not lead to an assumption that the deceased had consumed alcohol in good quantity and was under the influence of alchahol, while driving the vehicle. The certificate only states that it is an alcohol like smell and nothing more. Therefore the view taken by the Tribunal by fixing contributory negligence as against the rider of the motor cycle, namely the deceased, is not correct.

10. The Tribunal has fixed a monthly income of Rs.3,000/-. It is the contention of the learned counsel for the Insurance Company that actually the deceased was a Government servant or rather he was employed abroad and he was having proficiency in computer application, which is clear from Ext.A3 Computer Programme Vocational Training Certificate. Ext.A4 Diploma Certificate (Desktop Publishing) will also show that he was having

proficiency in computer operations. Based on this evidence, the learned counsel for the Insurance Company submitted that actually it was an attempt by the petitioners to avoid the real aspects by limiting the claim as Section 163A. The learned counsel for the claimants submitted that the said argument cannot be sustained. Tribunal after verifying various aspects fixed the monthly income of Rs.3,000/-.

11. Going by the award passed by the Tribunal after fixing Rs.3,000/- as monthly income, the total compensation for loss of dependency is calculated as Rs.4,08,000/-. The other amounts fixed are funeral expenses at Rs.2,000/- and for loss of estate Rs.2,500/- is granted. We find no infirmity in the award and therefore we affirm the assessment of compensation made by the Tribunal.

Therefore the appeal is allowed and we order that the claimants will be entitled for a total compensation of Rs.4,12,500/-(Rupees Four lakhs twelve thousand and five hundred only) as found by the Tribunal. The Insurance Company will deposit the balance amount along with interest awarded within a period of three months and we permit the claimants to withdraw the amount. The amount will be shared equally among them. Parties will suffer their costs in the appeal.

Sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE

Sd/-
K.P.JYOTHINDRANATH,
JUDGE

vs

/TRUE COPY/

PA TO JUDGE