IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

MACA.No. 1655 of 2013 ()

AGAINST THE AWARD IN OPMV 635/2011 of M.A.C.T., MANJERI DATED 02-05-2013

APPELLANTS/PETITIONERS:
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1. ANIMOL, AGED 38 YEARS
   W/O.LATE AUGUSTINE E.P.

2. HENCY MINOR AGED 12 YEARS
   D/O.LATE AUGUSTINE E.P.

3. NEEBA MOL, D/O.LATE AUTUSTINE E.P. AGED 8 YEARS
   MINORS ARE REPRESENTED BY THEIR MOTHER
   AND LEGAL GUARDIAN ANIMOL.

4. MARIAKUTTY, W/O.PAILY, AGED 63 YEARS
   (ALL RESIDING AT ERANIKULATHIL HOUSE, ELANJI
   ELANJI VILLAGE, MUVATTUPUZHA TALUK
   ERNAKULAM DISTRICT.

BY ADVS.SRI.V.S.CHANDRASEKHARAN
SRI.M.V.DAS
SMT.LEKSHMI SWAMINATHAN

RESPONDENT(S)/RESPONDENTS:
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1. O. SASIDHARAN
   KSRTC BUS DRIVER, S/O.KUTTY CHEKKU ODUVILANGAL HOUSE
   P.O.MELATTUR MALAPPURAM DISTRICT
   PIN 676 505.(DRIVER)

2. THE MANAGING DIRECTOR,
   KERALA STATE ROAD TRANSPORT CORPORATION
   THIRUVANANTHAPURAM, PIN 695 033 (OWNER)

R BY SMT.BIMALA BABY, SC, KSRTC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.1655 of 2013

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Dated this the 8th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in O.P(MV).No.635 of 2011 on the file of the Motor Accidents Claims Tribunal, Manjeri. They are the wife, two minor daughters and mother respectively of late E.P. Augustine, an employee of the Indian Oil Corporation Limited, who passed away on 08.03.2011 after sustaining injuries in a motor accident that took place on the same day. The appellants contended that at about 8.50 pm on 8.03.2011 while the deceased was travelling on a motor bike, a stage carriage bus owned by the Kerala State Road Transport Corporation and driven by the first respondent in a rash and negligent manner collided with the motor bike which the deceased was riding and in that accident, the deceased sustained serious injuries and succumbed to the injuries sustained by him on the way to the hospital. The appellants contended that the accident took place on account of the rash and negligent driving of the stage carriage bus by the first respondent. The appellants had in O.P.(MV)No.635 of 2011 claimed a total sum of ₹80,00,000/- as compensation under various heads.

2. The first respondent driver did not enter appearance notwithstanding service of notice and he was set ex-parte. The second respondent entered appearance and filed a written statement

attributing negligence to the deceased. He also contended that the deceased was not wearing a helmet at the relevant time and therefore, the deceased himself was responsible for the accident. Before the Motor Accidents Claims Tribunal, no oral evidence was adduced on both sides. However Exts. A1 to A8 were produced and marked on the side of the claimants. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the rash and negligent driving of the first respondent. The Motor Accident Claims Tribunal also held that as the first respondent, the driver of the stage carriage bus alone was negligent, the question whether the fate of the deceased could have been avoided, had he been wearing a helmet does not arise for consideration. After considering the evidence on record, the Tribunal awarded the sum of ₹81,45,074/- as compensation under various heads inclusive of the sum of ₹81,15,074/- awarded under the head loss of dependency. The claimants have, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal filed this appeal.

3. We heard Smt. Lekshmi Swaminathan, learned counsel appearing for the appellants. Though the first respondent has been served, he has not entered appearance. Though the learned standing counsel for the second respondent took notice when the appeal was admitted by order passed on 4.10.2013, when the appeal was called on for hearing today, the learned standing counsel was not present.

There was also no representation on his behalf. We also find it relevant in this context to mention that though the Kerala State Road Transport Corporation is represented in this court by more than one standing counsel, it is only rarely that the standing counsel of the Kerala State Road Transport Corporation appears in this court.

4. Smt. Lekshmi Swaminathan, learned counsel for the appellant contended that the Motor Accidents Claims Tribunal has ignored Ext.A17 certificate issued by the employer viz; the Indian Oil Corporation Limited in Form No.16 prescribed under section 203 of the Income Tax Act, 1961 and in computing the loss of dependency on the premise that the deceased was earning only a lesser monthly income. The learned counsel for the appellant submitted that Ext.A17 certificate would disclose that during the period from 1.4.2010 to 31.3.2011 (the accident took place on 8.3.2011 and the deceased died on that day) the gross annual income of the deceased was ₹20,03,934.69, the tax liability was ₹3,95,305/-, the net annual income after deduction of tax was ₹15,08,625/- and in such circumstances, when there was acceptable documentary evidence on record to prove the actual income of the deceased, the Motor Accidents Claims Tribunal erred in resting its conclusion regarding the annual income of the deceased on surmises and conjectures. The learned counsel also contended that as the number of persons dependent on the deceased was four viz; the claimants who are four in

number, only 1/4th of the income could have been deducted towards personal expenses and not 1/3rd as done by the Tribunal. The learned counsel also contended that as an employee of the Indian Oil Corporation, the deceased would have, besides increase in his annual income also received pension after his retirement and the said aspect has not been considered by the Tribunal when it award the compensation. The learned counsel for the appellants contended relying on the decision of the Apex Court in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)] that the compensation awarded under the heads loss of consortium, loss of love and affection and funeral expenses is also liable to be enhanced.

5. We have considered the submissions made at the Bar by the learned counsel appearing for the appellants. We have also gone through the pleadings and the materials on record including the lower court records which have been called for. The accident in the instant case took place on 8.3.2011. The deceased was at that time employed as a Junior Chargeman in the Indian Oil Corporation Limited. The appellants had in the claim petition averred that the deceased was aged 49 years on the date of the accident, his date of birth being 29.05.1962. They had also stated that had not the accident happened, he would have continued in employment till he completed the age of 60 years and would have also earned promotions and gone over to a higher scale of pay. The second respondent, the owner of the stage

carriage bus did not dispute these statements specifically, but only contended that the claimants are put to strict proof of the claim made in column Nos. 3, 4, 5, 6, 7, 12, 20, 21, 22, 23, 25 and 28 of the claim petition. The main defense put forward by the second respondent was that the deceased was responsible for the accident, that the motor bike was being driven at an uncontrollable speed and that the deceased was not wearing a helmet which resulted in fatal head injuries. They also contended that the deceased did not have a driving licence at the time of the accident.

6. To prove the age of the deceased, Ext.A13 driving licence issued to the deceased from the State of Gujarat on 23.06.2000 was produced. That licence was valid till 28.5.2012. In that licence the date of birth of the deceased is shown as 29.5.1962. The said licence authorises him to drive motor bikes with gear and without gear. Ext.A13 licence establishes the fact that on the relevant date i.e., 8.3.2011, the deceased possessed a valid driving licence to drive the motor bike. The contention of the second respondent that the deceased did not possess a valid licence on the relevant date cannot therefore be accepted. Ext.A13 also establishes the fact that the deceased was born on 29.5.1962. As per section 14 of the Motor Vehicles Act, 1988 a driving licence issued or renewed under the Act shall except in the case of a licence to drive a transport vehicle be effective for a period of 20 years from the date of such issue or

renewal or until the date such person attains the age of 50 years, whichever is earlier. As the deceased was born on 29.5.1962 it was stipulated in Ext.A13 that it is valid till 28.5.2012, the date on which he would have attained the age of 50 years. However we notice that in Ext.A14 PAN card issued to the deceased, his date of birth is mentioned as 29.5.1963. Even if one were to take 29.5.1963 as the date of birth of the deceased, on the date of the accident (8.3.2011) he would have been only 48 years old. The Motor Accidents Claims Tribunal has in the instant case taken his age as 49 in the light of Ext.A13 driving licence. In view of Ext.A13 driving licence issued to the deceased wherein his date of birth is mentioned as 29.5.1962, we are of the opinion that no exception can be taken to the finding entered by the Tribunal that on the date of the accident, the deceased was 49 years old.

7. Ext.A17 certificate discloses that the gross annual salary drawn by the deceased during the financial year 2010-2011 was ₹19,03,930/-. He had also paid the sum of ₹3,95,305/- towards income tax. His net annual salary as per Ext.A17 is ₹15,08,625/-. It is not in dispute that if the deceased had not succumbed to the injuries sustained by him, he would have continued in employment for a further period of 11 years. The Motor Accidents Claims Tribunal has, notwithstanding the overwhelming documentary evidence available on record proceeded to compute the annual income of the deceased on

its own. In our opinion, in the light of Ext.A17, such an exercise ought not have been adopted. As stated earlier, the deceased was aged only 49 years. Had he been alive, in the course of the next 11 years, he would have earned promotions and his salary would have gone up. Even if he had continued in the same post, on account of periodical wage revisions his income would have gone up. The Tribunal has therefore rightly held that his annual earning has to be enhanced by 30% to provide for future prospects.

8. As stated earlier, Ext.A17 establishes the fact that the net annual income of the deceased was ₹15,08,625. As the deceased was maintaining a family consisting of his wife, two minor children and his mother, only $1/4^{th}$ of the annual income can be deducted towards his personal expenses. Computed on that basis, the contribution to the family would be ₹11,31,468.71. The compensation payable under the head loss of dependency will be ₹11,31,468.71 X 11 = ₹1,24,46,156.25. 30% thereof mainly ₹37,33,846.87 will have to be added to the aforesaid amount to take care of future prospects. The compensation payable under the head loss of dependency will be ₹1,24,46,156.25 + ₹37,33,846.875 = ₹1,61,80,003/-, which we round off to ₹ 1,61,80,000/-. The Motor Accidents Claims Tribunal has by the impugned award awarded only the sum ₹81,15,074/- under the head loss of dependency. Consequently we hold that the appellants/claimants will be entitled to an additional compensation of

₹80,64,926/- under the head loss of dependency over and above the amount awarded as compensation by the Motor Accidents Claims Tribunal.

9. The impugned award discloses that the Motor Accidents Claims Tribunal has awarded only the sum of ₹10,000/- to the wife of the deceased as compensation under the head loss of consortium and a similar amount of ₹10,000/- to the two minor children under the head loss of love and affection. The Tribunal has also awarded only the sum of ₹5,000/- towards funeral expenses. The Apex Court has in **Rajesh v. Rajbir Singh** (supra) held that in the case of death of the husband, the wife should be awarded the sum of ₹1,00,000/- under the head loss of consortium. The Apex Court has in that decision awarded the sum of ₹1,00,000/- as compensation in the aggregate to the two minor children. The Apex Court has also held that a minimum amount of ₹25,000/- should be awarded under the head funeral expenses. Applying the principles laid down by the Apex Court, the appellants in the instant case are entitled to a further sum of ₹90,000/- towards the compensation under the head loss of love and affection, a like sum of ₹90,000/- under the head loss of love and affection to the minor children and a sum of ₹20,000/- under the head funeral expenses, aggregating to ₹2,00,000/-

10. We accordingly hold that the appellants/claimants are entitled to an additional compensation of ₹82,64,926/- as

compensation. The Motor Accidents Claims Tribunal has by the impugned award apportioned the compensation awarded by it in equal shares to the four claimants. Having regard to the fact that the deceased has left behind two daughters who were aged 12 years and 8 years respectively at the time of his death, we are of the opinion that from the enhanced compensation awarded by this court, the sum of ₹90,000/- and proportionate interest thereon should be paid to the wife of the deceased and the balance amount deposited in the names of the children of the deceased viz; appellants 2 and 3 herein. Ext.A6 discloses that the second appellant was born on 23.10.1998 and Ext.A7 discloses that the third appellant was born on 3.10.2002. Both of them are yet to attain the age of majority. Such a course of action would in our opinion protect the interests of the minor children and help them to pursue higher education if they are desirous of pursuing higher education. In any case the amount deposited will be available to be utilised at the time of their marriage.

We accordingly allow the appeal and award the sum of ₹82,64,926/- (Rupees eighty two lakhs sixty four thousand nine hundred and twenty six) as compensation to the appellants over and above the compensation awarded by the Motor Accidents Claims Tribunal. The second respondent shall deposit the said amount together with interest at 9% per annum from the date of petition till realisation within two months from today, failing which it will be open to the appellants/claimants to realise the same from the second respondent and its assets. Upon such deposit being made, the sum of ₹90,000/- and proportionate interest thereon shall be released to the first appellant. The balance amount shall apportioned among the minor children (appellants 2 and 3) equally and kept in fixed deposit in a nationalised bank till they attain age of majority and for a further period of two years. No costs.

sd/-
P.N.RAVINDRAN
JUDGE

sd/-
ANU SIVARAMAN
JUDGE

kp/-

True copy

P.A.To Judge