

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

MACA.No. 1892 of 2015 ()

AGAINST THE AWARD IN OPMV 706/2010 of MACT PALA DATED 17-03-2014

APPELLANT/PETITIONERS:

1. MERCY MATHEW, W/O LATE MATHEW, MULAMATTATHIL HOUSE, ARUMANOOR P.O., AYARKUNNAM VILLAGE, NOW RESIDING AT CHRALAYIL HOUSE, POOVARANI P.O., MEENACHIL TALUK, KOTTAYAM DISTRICT.
2. JOSPHY MATHEW, D/O LATE MATHEW, MULAMATTATHIL HOUSE, ARUMANOOR P.O., AYARKUNNAM VILLAGE, NOW RESIDING AT CHRALAYIL HOUSE, POOVARANI P.O., MEENACHIL TALUK, KOTTAYAM DISTRICT.
3. JINO MATHEW, S/O LATE MATHEW, MULAMATTATHIL HOUSE, ARUMANOOR P.O., AYARKUNNAM VILLAGE, NOW RESIDING AT CHRALAYIL HOUSE, POOVARANI P.O., MEENACHIL TALUK, KOTTAYAM DISTRICT.
4. JISS MATHEW, S/O LATE MATHEW, MULAMATTATHIL HOUSE, ARUMANOOR P.O., AYARKUNNAM VILLAGE, NOW RESIDING AT CHRALAYIL HOUSE, POOVARANI P.O., MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADVS.SRI.CYRIAC KURIAN
SRI.BABY THOMAS
SRI.K.D.ZACHARIAS

RESPONDENTS/RESPONDENTS

1. SUDHEER M.D., S/O PRABHAKARAN, MEPPULLY HOUSE KOSHUKULLY 680751
2. VENKIDACHALAM, S/O SUBRAMANIYAN, MODAMANGALAM, TIRUCHY, TAMILNADU.
3. MOHANKUMAR, 23/10, VINAYAKA HOUSE, KANATTUKARA, THRISSUR 680001
4. THE ORIENTAL INSURANCE CO. LTD., REPRESENTED BY ITS DIVISIONAL MANAGER, KOTTAYAM 686001

R4 BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 30-06-2015, 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.1892 of 2015

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Dated this the 30th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in O.P(M.V)No. 706 of 2010 on the file of the Motor Accidents Claims Tribunal, Pala. They are the wife and three children of late T.C. Mathew who sustained fatal injuries in a motor accident that took place on 11.4.2010. The victim of the accident was travelling in his own car along with his near relations. It is stated that the said motor car collided with a stage carriage bus bearing registration No. KL 8/AN-4797 driven by the first respondent, owned by the second respondent and insured by the fourth respondent. The policy of insurance however stood in the name of the fourth respondent. Late T.C. Mathew, the predecessor-in-interest of the appellants who was driving the motor car succumbed to injuries sustained by him on the way to the hospital. His wife and children, the appellants herein thereupon instituted O.P.(MV)No.706 of 2010 before the Motor Accidents Claims Tribunal, Pala seeking a total sum of ₹12,00,000/- as compensation. They contended that the victim of the accident who was aged 52 years was earning a monthly income of ₹10,000/- as an agriculturist. They had also averred that he owned an extent of 5 acres of agricultural land. They contended that the accident took place on account of the rash and negligent driving of the stage carriage bus by its driver.

2. Upon receipt of notice, the third respondent alone entered appearance and filed a written statement. The other respondents were set ex-parte. Though the insurer admitted the existence of a valid insurance policy, it contended that the accident did not take place as a result of the negligence of the driver of the bus. O.P.(MV).No.706 of 2010 was tried and disposed of along with five other claim petitions filed by the other passengers and legal heirs of other passengers travelling in the motor car driven by the predecessor-in-interest of the appellants. 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 stage carriage bus. The Tribunal awarded various amounts as compensation in the different claim petitions. In O.P.(MV).No.706 of 2010 filed by the appellants herein, the Motor Accidents Claims Tribunal Awarded the sum of ₹7,14,250/- as compensation under various heads, consisting of the sum of ₹5,69,250/- awarded under the head loss of dependency. The claimants have, dissatisfied with the quantum of compensation awarded by the Tribunal, filed this appeal.

3. We heard Sri.Cyriac Kurian, learned counsel appearing for the appellants and Smt. K.S. Santhi, learned counsel appearing for the fourth respondent. We have also gone through the pleadings and the materials on record. The victim of the accident was an agriculturist. He also owned 5 acres of agricultural land. The fact that he owned a

car is not in dispute. He was also maintaining a family consisting of his wife and three children of whom one was a minor on the date of the accident. Though in the claim petition the claimants had averred that the deceased was earning a monthly income of ₹8,000/-, for want of any evidence to substantiate the said plea, the Tribunal adopted the notional income of the deceased as ₹5,000/-. In our opinion, having regard to the fact that the deceased was an agriculturist who owned 5 acres of land and a motor car and was maintaining a family consisting of himself, his wife and three children, on a modest estimate, the Tribunal ought to have taken his monthly income as ₹7,500/-. Computed on that basis, the compensation payable to the claimants under the head loss of dependency will be $\text{₹7,500/-} \times 12 \times \frac{3}{4} = \text{₹67,500} \times 11 = \text{₹7,42,500/-}$. The Motor Accidents Claims Tribunal has by the impugned award awarded only the sum of ₹5,69,250/- under that head. We accordingly award an additional compensation of ₹1,73,250/- to the appellants/claimants under the head loss of dependency.

4. Though the Motor Accidents Claims Tribunal has awarded the sum of ₹1,00,000/- under the head loss of consortium to the first claimant wife, it awarded only the sum of ₹5,000/- as compensation under the head loss of love and affection to the three children of the victim. It is not in dispute that on the date of the accident the fourth appellant was a minor aged 17 years. The other children were aged

24 and 22 respectively. Having regard to the aforesaid fact, we are of the opinion that on a modest estimate, the Motor Accidents Claims Tribunal ought to have awarded the sum of ₹1,50,000/- under the head loss of love and affection to the three children of the deceased. As stated earlier, the Tribunal has awarded only the sum of ₹5,000/- under that head. We accordingly award an additional compensation of ₹1,45,000/- under the head loss of love and affection to the claimants.

5. The Tribunal has likewise awarded only the sum of ₹5,000/- under the head loss to the estate. On a modest estimate we are of the opinion that a further sum of ₹5,000/- should be awarded under that head. We accordingly award an additional sum of ₹5,000/- as compensation under the head loss to the estate. It is not in dispute that the deceased did not die instantaneously. He died on the way to the hospital. Having regard to the said fact, we are of the opinion that a lump sum amount of ₹10,000/- should have been awarded under the head pain and suffering. The Tribunal has not awarded any amount under that head. We accordingly award the sum of ₹10,000/- under the head pain and suffering. The compensation awarded under the other heads cannot be said to be inadequate or meagre. We therefore find no grounds to enhance the same.

We accordingly award to the appellants/claimants a further sum of ₹1,73,250/- + ₹1,45,000/- + ₹5,000/- ₹10,000/- = ₹3,33,250/- as compensation over and above the compensation awarded by the

Tribunal. The impugned award discloses that the Motor Accidents Claims Tribunal has awarded interest only at the rate of 7.5% per annum. It is only if the insurer fails to deposit the amount within three months that the claimants will be entitled for interest at the rate of 9% per annum. In the light of the decision of the Apex Court in **Supe Dei v. National Insurance Co. Ltd.** (2009 (4) SCC 513) we are of the opinion that the Motor Accidents Claims Tribunal ought to have awarded interest at the rate of 9% per annum on the compensation awarded by it. We accordingly award interest on the compensation awarded by the Tribunal at the rate of 9% per annum from the date of petition till the date of deposit. The third respondent insurer shall deposit the enhanced compensation awarded by this court together with interest at 9% per annum as also interest on the compensation awarded by the Tribunal at the said rate with effect from the date of petition till the date of deposit. Such deposit shall be made within two months from today. Upon such deposit being made, the amount deposited shall be disbursed among the appellants in equal proportion. No costs.

P.N.RAVINDRAN
JUDGE

ANU SIVARAMAN
JUDGE