IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

MACA.No. 781 of 2014 ()

AGAINST THE AWARD IN OPMV 577/2008 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, NORTH PARAVUR DATED 28-11-2013

APPELLANT/3RD RESPONDENT:

CHOLAMANDALAM MS GENERAL INSURANCE COMPANY LIMITED
THRISSUR
NOW REPRESENTED BY ITS DEPUTY MANAGER-CLAIMS
ACEL ESTATE, IYYATTIL JUNCTION, CHITTOOR ROAD
KOCHI-11.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONERS 1 TO 3:
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1. SHARON
W/O.JOHNSON, PALAKKAL HOUSE, VALLUVALLY KARA
KOTTUVALLY VILLAGE-683308.

2. JOSNA,
D/O.JOHNSON, PALAKKAL HOUSE, VALLUVALLY KARA
KOTTUVALLY VILLAGE-683308.

3. ROHAN JOHNSON,
S/O.JOHNSON, PALAKKAL HOUSE, VALLUVALLY KARA
KOTTUVALLY VILLAGE-683308.

(PETITIONERS 4 AND 5 DIED AND THERE IS NO LEGAL HEAIRS TO BE IMPLEADED).

R1-3 BY ADV. SRI.REJI GEORGE
R1-R3 BY ADV. SRI.P.S.GOPALAKRISHNAN NAIR
R1-R3 BY ADV. SMT.ANUPAMA JOHNY
R1-R3 BY ADV. SRI GOPAKUMAR G

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.,

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M.A.C.A. No.781 of 2014

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Dated this the 9th day of February 2015

JUDGMENT

Ramachandran Nair , J.,

This appeal is filed by the Insurance Company aggrieved by the total amount awarded as compensation by the Tribunal.

2. We heard learned Senior Counsel Sri. Mathews Jacob for the Insurance Company and learned counsel Sri. Gopakumar for the respondents/claimants.

3. The application was filed consequent on the death of Sri. Johnson in a motor vehicle accident, occurred on 25.4.2008 at 8 p.m. at a place called Madaplathuruth. He was riding the motor cycle bearing registration No. KL-7/BC-4521 on the Moothakunnam -North Paraur national highway. The offending vehicle is a Toyotta Innova car bearing registration No. KL-42/A-4961 which while trying to overtake the motorcycle hit the same. He was immediately taken to the Donbosco Hospital and thereafter referred to Lourdes Hospital, Ernakulam. While undergoing treatment in Lourdes Hospital, Ernakulam, he died on 4.5.2008.

4. The claimants before the Tribunal are the widow and two minor children as well as his parents. But it is seen that the parents died after the filing of the application.

5. Learned Senior Counsel for the appellant mainly raised the following contentions. It is submitted that the monthly income claimed in the application was Rs. 6,000/-. But while adducing evidence in the matter they claimed it as Rs. 12,000/-. Ext.A6 is the salary certificate issued by M/s.Athira Associates stating that he was working as a field Officer. It is further submitted that the Managing partner was examined in support of the claim of monthly income at the said rate. PW1 is the wife of the deceased. She claimed that he was getting Rs. 25,000/- per month as income. It is submitted that fixation of the monthly income at the rate of Rs. 12,000/- is not justified. Alternatively, it is submitted that if the monthly income is reckoned as Rs. 12,000/-, then the deceased was liable to pay income tax and the said component will have to be deducted. It is also submitted that deduction for personal expenses should have been 1/3 instead of ¼ as there are three claimants.

6. Learned counsel for the respondents submitted that it is true that the claim application, the income was shown as Rs. 6,000/-. But later, it was amended as Rs. 12,000/-. It is submitted that he was getting the said income. It is supported by the evidence given by PW2. Learned counsel invited our attention to the evidence of PW2. It is deposed by him that the deceased was a field officer. He was working from the year 2003. It is also stated that he was getting further amount towards commission. According to him, he would have been earning Rs. 15,000/- per month. In the cross examination it is stated that no income tax is deducted at source.

7. Since evidence is there by way of documentary evidence as Ext.A6 coupled with evidence of PW2 the employer, we find no reason to interfere the fixation of income at the rate of Rs. 12,000/-. But the income tax component will have to be deducted. We have been informed by the learned Senior counsel for the appellant that for the said year the total amount by way of income tax and educational cess deductable is at Rs. 3,502/- and therefore, by taking the said amount for the whole period,

when we apply the multiplier, the said component will be Rs. 49,028/- which will have to be deducted for fixing the dependency compensation. We have verified the table for payment of income tax for the year 2008-09. Up to Rs. 1,10,000/- there was exemption and up to Rs. 1,10,000- Rs. 1,50,000/-, the tax will be 10% of the amount by which the total income exceeds Rs. 1,45,000/-. Up to 1,50,000/- to Rs.2,50,000/- Rs.500 plus 20% of the amount by which the total income exceeds Rs. 1,50,000/-. Rs. 2,50,000/- and above, Rs.20,500 plus 30% of the amount by which the total income exceeds Rs. 2,50,000/-. In the light of the above, the compensation awarded by the Tribunal will have to be recomputed.

8. By deducting 1/3 from the total amount Rs. 12,000/- the contribution to the family will be Rs. 8,000/- per month. Even though, learned counsel for the claimant submitted that 30% of the amount will have to be increased going by the decision of the Apex court in ***Sarala Verma Vs. Delhi Transport Corporation [(2010 (2) KLT 802 (SC)*** as rightly

pointed out by the learned Senior Counsel for the Insurance Company, the employment of the deceased cannot be stated to be a permanent one with additions to salary by way of increment or periodical revision as evidence is not there. We will not therefore be justified in adopting 30% increase to the monthly income as granted by the Tribunal. Therefore, the dependency contribution will be (Rs.8000x12x14-Rs.49028)=Rs. 12,94,792/-.

9. Accordingly we modify the award as follows:

Sl.No.	*Heads*	*Amount Awarded (in Rs.)*	*Amount modified (in Rs).*
1	Damage to clothing	1000	1000
2	Funeral expenses	25000	25000
3	Transportation expenses		
4	Medical expenses	148800	148800
5	Bystander expenses	1800	1800
6	Pain & sufferings	50000	50000
7	Compensation for loss of income	1965600	12,94,792
8	Compensation for loss of love and affection	100000	100000
9	Compensation for loss of estate	50000	50000
10	Compensation for loss of consortium	100000	100000
	Total	24,42,200	1771392

10. Thus the total compensation will be Rs.17,71,392/-

(Rounded off to Rs. 17,71,390/-) (Rupees Seventeen lakh Seventy One Thousand Three hundred and Ninety) only which will carry interest at the rate of 9% p.a from the date of petition in the light of the judgment of the apex court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513]. The Insurance Company is directed to deposit the award amount less the amount already deposited within a period of three months.

The appeal is allowed. Parties will suffer their costs in the appeal.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-
P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge