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 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

MACA.No. 2108 of 2015 ()

(AGAINST THE AWARD IN OPMV 1/2009 of MACT VADAKARA DATED 26-02-2015)

APPELLANTS/PETITIONERS:

1. MANOJ P R AGED 42 YEARS
S/O.LATE NANU ACHARI, RESIDING AT 751
CTS HAL COLONY QUARTERS, VIMANAPURAM, MARATHA HALLY PO
BANGALORE EAST, KARNATAKA STATE, PIN-560 037.

2. LIJI P.R. AGED 40 YEARS
D/O.LATE NANU ACHARI, RESIDING AT 751
CTS HAL COLONY QUARTERS, VIMANAPURAM, MARATHA HALLY PO
BANGALORE EAST, KARNATAKA STATE, PIN-560 037.

3. SHAJI MOL P..R. AGED 36 YEARS
D/O.LATE NANU ACHARI, RESIDING AT 751
CTS HAL COLONY QUARTERS, VIMANAPURAM, MARATHA HALLY PO
BANGALORE EAST, KARNATAKA STATE, PIN-560 037.

BY ADV. SRI.ABU MATHEW

RESPONDENT(S)/RESPONDENTS:

1. KUMAR A N
AGE NOT KNOWN, S/O.NARAYANAN, NO.171/1
6TH CROSS, 8TH MAIN MALLESWARAM, BANGALORE
KARNATAKA STATE, PIN-560 003.

2. GIREESH S.H., AGED 36 YEARS
S/O.SREENIVAS, 69 HANAKERA POST, GARVISITE
MANDYA TALUK, MANDYA DISTRICT, KARANATAKA STATE
PIN-571 404.

3. THE ORIENTAL INSURANCE CO. LTD.,
NO.6, 7TH MAIN, NEXT TO BTS KALYANA MANDAPA
80 FT ROAD, 3RD B BLOCK, 7TH MAIN KORAMANGALA
BANGALORE, KARNATAKA STATE, PIN-560 034.

R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R3 BY ADV. SRI.P.JACOB MATHEW
BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 19-11-2015 ALONG WITH M.A.C.A.NO.2109 OF 2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

....

M.A.C.A.Nos.2108 AND 2109 OF 2015

....

Dated this the 19th November, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

These two appeals arise from a common cause of action involving an accident when the ambulance bearing No.KA.14/4005 in which the deceased son and mother were travelling along with the dead body of a near relative fell into a river, causing immediate death of both besides the death of an another person and injuries to others.

2. The appellants in M.A.C.A.No.2108 of 2015 are brother and sisters of the deceased son, while the appellants in M.A.C.A.No.2109 of 2015 are children of the deceased mother. The deceased were travelling in the Ambulance owned, driven and insured by the respondents 1 to 3 respectively. When the ambulance reached the place of occurrence near Pattiat Bridge, it went out of control and fell into a river, allegedly because of

the negligence on the part of the driver of the Ambulance. The loss resulted because of the death was sought to be compensated by filing claim petitions by the appellants /claimants before the Tribunal. The cases were considered along with other connected cases .

3. No statutory ground of defence involving any violation of policy condition was mooted by the Insurance Company. The evidence adduced before the Tribunal consists of the oral testimony of P.W.1 and 2 and documentary evidence produced as Exts. A1 to A25 from the part of the claimants; whereas the respondents chose to adduce evidence by examining R.W.1 and 2, also producing documents as Exts.B1 to B3 besides the third party exhibits produced as Exts.X1 and X1(d). Based on the materials on record, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the Ambulance.

4. With regard to the quantum of compensation payable, the case of the claimants in O.P.(MV) 1 of 2009 was that the deceased was working as Senior Customer Support Engineer in a

company by name Circutek, Bangalore, with monthly salary of Rs.22000/- as discernible from Ext.A6 salary certificate .The Asst. Manager of the Company was examined as PW.1. The version and the versions were sought to be corroborated by producing Ext.A8 Bank account details, Ext.A9 Muster roll and Ext.A10 Salary disbursement record for June, 2008.

M.A.C.A.2108 of 2015:

5. The amounts awarded by the Tribunal in O.P.(MV) 1 of 2009 under various heads are given below:

1. Transport to hospital	:	Rs.1000/-
2. Damage to clothing	:	Rs.1000/-
3. Funeral expenses	:	Rs.5000/-
4. Pain and suffering	:	Rs.5000/-
5. Loss of love and affection	:	Rs.15000/-
6. Loss of estate	:	Rs.1672324/-
7. TOTAL	**:**	**Rs.1699324/-**

Based on the evidence adduced, the monthly income was reckoned as Rs.21020/-. 10% of the same was deducted towards income tax and the balance was reckoned as

Rs.18918/-. At the same time, the Tribunal was conscious of the necessity to have added future prospectus . It was accordingly that 30% of the income was added in this regard taking the reckonable monthly income as Rs.24593/-. The deceased was aged 27 years . Hence the multiplier of '17' was adopted. But while working out compensation in respect of the death, as payable to the family, only 1/3rd was reckoned, placing reliance on the decision rendered in ***Joseph vs. Giji Varghese (*2009 (4) KLT 199) .** The reasons stated by the Tribunal is that since dependency was not proved, compensation could be paid to appropriate extent, towards loss of estate, thus awarding compensation of Rs.1672324/-. It is relevant to note that the above decision was rendered by a Division Bench of this Court before declaration of law by the Apex Court in ***Sarla Verma vs. Delhi Transport Corporation (***2009(6) SCC 121). By virtue of the verdict passed by the Apex Court, this Court finds that the deceased being a Bachelor, 50% could have been reckoned as contribution to the family. As such, the amount awarded by the Tribunal under the above head requires to be varied adopting the calculation as 24593 x 12 x17 x 50/100, which comes to **Rs.25,08.486/-.** Giving credit to the sum of Rs.1672324/- awarded by the Tribunal, the balance comes to **Rs.8,36,162/**-. Only a sum of Rs.15000/- has been awarded by the Tribunal towards loss of love and affection and a sum of Rs.5000/- as funeral expenses. Going by the declaration of law by the Apex Court as per the decision in ***Rajesh vs. Rajbir Singh*** [**2013 (3) KLT 89 (SC)],** it should have been Rs.100000/- and 25000/- respectively. We award the same. After giving credit to the amounts under the above heads, the balance comes to **Rs.85000/- and Rs.20000/**- respectively. In the above circumstance, the balance compensation payable in respect of the demise of the deceased in OP(MV) 1 of 2009 is **Rs.9,41,162/**-(Rupees nine lakhs forty one thousand one hundred and sixty two only).

M.A.C.A.No.2109 OF 2015:

6. In respect of O.P(MV)No.2 of 2009, the claimants are children of the deceased mother, who lost her life in the above said accident occurred on 21.06.2008 . The claim was putforth

stating that she was aged 57 years. But observing that, in Ext.A12 Post Mortem Certificate the age was shown as 50 and as per the Election Identity Card issued on 01.01.1994, she was aged 39, the age was fixed as '54' years on the date of the accident and accordingly, the multiplier of '11' was adopted instead of '9'. It is true that there is an admission in the application that the deceased was aged 57 years as mentioned above. But the fact remains that the exact position was sought to be revealed by producing election identity card as Ext.A11, wherein the age was shown as '39' as on 01.01.1994, the date of issuance of the election identity card. We do not find any reason to interfere with the finding and reasoning given by the Tribunal while working out compensation in respect of the head -loss of estate.

7. The loss of dependency has been worked out taking the notional monthly income as Rs.3000/- as on the date of the accident, i.e. on 21.06.2008. In the instant case, the accident occurred was on 21.06.2008. Considering the economic conditions prevailing as on that date, we find it appropriate to

reckon Rs.4000/- as the monthly income for working out the compensation. Similarly, only 1/3rd has been reckoned as contribution to the family, placing reliance on the decision in ***Joseph vs. Giji Varghese*** (**2009(4) KLT 199**), for working out compensation under the head 'loss of estate'. It is relevant to note that the said decision was rendered by a Division Bench of this Court before declaration of law by the Apex Court in ***Sarla Varma's case*** (2009(6) SCC 121). Placing reliance on the verdict passed by the Apex Court, this Court finds that 2/3rd should have been reckoned as contribution to the family and as such, the amount awarded by the Tribunal under the above head requires to be varied. On re-working the compensation as above, treating 2/3rd of the income as contribution to family, deducting only 1/3rd towards personal expenses, the actual compensation payable comes to Rs. **352000**/-(4000 x 12 x 2/3 x 11). After giving credit to the sum of Rs,.1,32000/-, the balance comes to **Rs.220000/-** under the head 'loss of estate'. Similarly, in the case of loss of 'love and affection', the Tribunal has awarded only a sum of Rs.30000/-, which should have been

Rs.1 lakh by virtue of the law declared by the Apex Court in ***Rajesh vs. Rajbir Singh*** [**2013 (3) KLT 89 (SC)]**. But scope of the said decision has been considered and it has been made clear in the subsequent decision rendered by a Division Bench of this Court in **2014 (1) KLT 10 (Valsamma vs. Binu Jose)** that the amounts payable towards loss of love and affection and loss of consortium depend upon the age of the deceased as well as the age of the claimants. To strike a balance, and also considering the fact that the claimants are three in number, we find that the actual compensation payable under this head should have been Rs.75000/-. After giving credit to the sum of Rs.30000/- already awarded by the Tribunal, the balance payable under the above head comes to **Rs.45000/-**. In respect of the funeral expenses, the Tribunal has awarded only Rs.5000/-. Based on the decision of the Apex Court, it has to be Rs.25000/-. Hence the balance payable under the said head comes to **Rs.20000/**-. The total additional compensation payable in O.P.(MV)No.2 of 2009 comes to **Rs.2,85,000**/- (Rs.Two lakhs and eighty five thousand only).

8. We make it clear that the enhanced compensation in both the cases will carry 9% interest from the date of the petition, till realisation. Since Policy is admitted, the Insurance Company is directed to deposit the due amount within one month from the date of receipt of a copy of the judgment.

Both the cases are disposed of as above.

P.R. RAMACHANDRA MENON,
JUDGE

ANIL K. NARENDRAN,
JUDGE

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