IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

MACA.No. 1652 of 2011 ( )

AGAINST THE AWARD IN OPMV 588/2007 of M.A.C.T., PALAKKAD DATED 20-08-2010

APPELLANTS/PETITIONERS:

1. BINDU @ BINDUMOL, D/O SIVARAMAN W/O.LATE ANILDAS, KAKKAVA KALAM, VADAVANOOR CHITTUR TALUK, PALAKKAD DISTRICT.

2. PANKAJASHY, W/O.LATE PRABHAKARAN, MELPADAM HOUSE, NANNIYODE P.O., CHITTUR TALUK PALAKKAD DISTRICT.

BY ADV. SRI.P.K.MOHANAN(PALAKKAD)

RESPONDENTS/RESPONDENT:

1. PAULSWAMY, S/O PALAR NAIKAN @ PALAR NALKAR, MAHALAKSHMI TRANSPORT, ETTAYAYAPURAM ROAD THOOTHUKUDI, TAMILNADU, PIN-632010.

2. JEEVAN ANDREWS, S/O.XAVIER, EERAYAPAN PETTY, 13/2, OSANA STREET ROAD TENI, PIN-636020.

3. THE NEW INDIA ASSURANCE CO.LTD., N.S.TOWER, NEAR STADIUM BUS STAND, KALMANDAPAM PALAKKAD, PIN-678007.

R3 BY ADV. SRI. VIJU THOMAS
R3 BY ADV. SMT.M.MEENA JOHN
BY SRI.A.A.ZIYAD RAHMAN (B/O)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.1652 OF 2011

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Dated this the 20th day of January, 2015

JUDGMENT

Asha, J.

The widow and mother of deceased Anildas have filed appeal seeking enhancement of compensation. The deceased was knocked down from his motor cycle on 6.12.2005 by another motor cycle and he succumbed to the injuries sustained. The deceased was a driver aged 34 years. The appellants claimed that he was earning a sum of ₹3,000/- per month. The claim petition was filed seeking compensation to the tune of ₹4,32,000/-. The Tribunal passed an award for a sum of ₹2,89,000/- along with interest @ 7.5% per annum.

2. The learned counsel appearing for the appellants submitted that the amount awarded under various heads of compensation are thoroughly inadequate.

3. We heard the learned counsel for the Insurance Company, who opposed the claim for enhancement.

4. It is found that the Tribunal has reckoned the income of the deceased as ₹2,750/- per month, as against the claim of ₹3,000/- per month. We find that the income of a driver cannot be less than ₹3,000/- at the relevant time. Therefore the compensation under the head of loss of dependency is recalculated reckoning the income @ ₹3,000/-. The deceased was aged 34 and accordingly the multiplier to be adopted is 16 as taken by the Tribunal. Therefore the compensation under the head of loss of dependency, after deducting 1/3 towards personal expenses will come to ₹3,84,000/- (3000 x 12 x 16 x 2/3).

5. The Tribunal has awarded a sum of ₹10,000/- alone towards loss of consortium and ₹10,000/- towards loss of love and affection. Similarly, towards funeral expenses, a sum of ₹2,500/- alone is granted. Going by the judgment of the Supreme Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)**, we enhance the amount towards loss of consortium and loss of love and affection to ₹1,00,000/- each and towards funeral expenses, we enhance the amount to ₹25,000/-.

6. The Tribunal has not awarded any amount towards pain and

suffering. We therefore award a sum of ₹10,000/- towards pain and suffering having regard to the fact that he succumbed to the injuries after getting admitted in the hospital consequent to the accident. Towards loss of estate also, the Tribunal has awarded only a sum of ₹2,500/-. Having regard to the fact that the deceased was a driver maintaining his family consisting of his mother and wife, we award a sum of ₹25,000/- towards loss of estate.

7. Therefore, the award passed by the Tribunal is modified accordingly as follows :

Head of claim	***Amount Awarded in rupees***
Loss of dependency	384000
Loss of consortium	100000
Loss of love and affection	100000
Loss of estate	25000
Funeral expenses	25000
Pain and suffering	10000
	644000 (Rupees six lakhs forty four thousand only)

8. The amount will carry interest @ 9% per annum from the date of petition. The amount will be apportioned in the ratio as

prescribed the Tribunal in the award. The Insurance Company shall deposit the amount less the amount already awarded within three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

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