IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

MACA.No. 761 of 2009 ( )

(AGAINST THE AWARD IN OPMV 2173/2002 of M.A.C.T.,KOTTAYAM DATED 13.05.2008)

APPELLANTS/CLAIMANTS

1. V.S. KUTTAPPAN, (*)
VATTAKAVIL HOUSE, VELLOOR P.O., PAMPADY
VILLAGE, REP. BY HIS NEXT FRIEND AND GUARDIAN
HIS WIFE SMT. MANIYAMMA. (*DIED)

ADDL.2. V.P. MANIYAMMA,
VATTAKAVIL HOUSE, VELLOOR P.O., PAMPADY
VILLAGE, KOTTAYAM DISTRICT.

3. ABHILASH K.,
VATTAKAVIL HOUSE, VELLOOR P.O., PAMPADY
VILLAGE, KOTTAYAM DISTRICT.

4. ASHA MOL. K.
VATTAKAVIL HOUSE, VELLOOR P.O., PAMPADY
VILLAGE, KOTTAYAM DISTRICT.

(ADDL. APPELANTS 2 TO 4 ARE IMPLEADED AS PER ORDER DATED 01.10.2015 IN I.A.No. 3376 OF 2015)

BY ADVS.SRI.S.ANANTHAKRISHNAN
SRI.N.K.SUBRAMANIAN

RESPONDENTS//RESPONDENTS:

1. M.A. THOMAS, S/O. ANDREWS, MUPPATHIYIL
HOUSE, KANJIKUZHY BHAGOM, MUTTAMBALAM VILLAGE

2. THE ORIENTAL INSURANCE CO. LTD.,
REP. BY ITS BRANCH MANAGER, BRANCH, OFFICE
KANJIKUZHY, KOTTAYAM.

R,R1 BY ADV. SRI.M.A.GEORGE
R,R2 BY ADV. SRI.MATHEWS JACOB (SR.)
R,R2 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No. 761 OF 2009

....

Dated this the 17th November, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

Inadequacy of compensation awarded in respect of the injuries resulted in a motor accident is the subject matter of challenge in this appeal.

2. The claimant was originally walking along the road, when he was knocked down by a maruti van bearing No.KL.5H/ 7995, owned and driven by the first respondent and insured by the second respondent. In fact, the claimant was working as a Sorting Assistant in the RMS, 'TV' Division Kottayam, drawing a monthly salary of Rs.8878/- as disclosed from Ext.A10 salary certificate. The loss to an extent of Rs.960000/-was sought to be compensated by filing O.P.(MV) No.2173 of 2002. The first respondent sought to remain ex parte. The matter was contested by the Insurance Company on general grounds. The evidence adduced before the Tribunal consists of oral testimony of P.W.1/

the doctor, who issued Exts.X1 and X1(a) (disability and medical certificates respectively) and documentary evidence of Exts.A1 to A12. Based on the evidence on record, the Tribunal arrived at a finding that the accident was only because of negligence on the part of the driver of the car. With regard to the quantum of compensation payable, it was brought on record that the claimant was lying more or less like a vegetable and that he was being represented before the Tribunal through his wife, as the next friend. Based on the pleadings and evidence on record, the Tribunal awarded amounts under various heads, to a total extent of Rs.444756/- which was directed to be satisfied with interest at the rate of 7% per annum. Being aggrieved of insufficiency of compensation, the petitioner is before this Court with this appeal.

3. Heard the learned Counsel for the appellant and the learned Standing Counsel for the Insurance Company, apart from the learned Counsel for the first respondent.

4. The injuries sustained and the consequences resulted have been discussed in paragraph '9' of the Award, which is

reproduced below for convenience of reference:

> *"9. It is proved by medical records that in the accident the petitioner had sustained traumatic brain injury right forehead abrasion superficial laceration of pinna bilaterally. The CT scan revealed a small punctuate hemorrhage of the right putamen, minor posterior inter hemispheric sub archnoid hemorrhage . Ext. A7 is a discharge summary issued from Amrita Institute of Medical Science and Research Centre which would indicate that the petitioner was admitted in the hospital on 14.04.02 with the above mentioned injuries and he was admitted to M.I.C.U and elective mechanical ventilation continued for five days. Slight gradual improvement in motor score occurred over the subsequent two weeks, however he remained otherwise semi-comatose. Tracheostomy done for maintaining pulmonary toilet. Chest and urine infections treated with appropriate antibiotics based on culture/sensitivity. Active limb physiotherapy given. Developed hypertension treated with amlodipine. One episode of coffee ground ryles tube aspirate treated with pantoprazole. He was discharged on 12.05.02 with advise to continue limb physiotherapy and routine nursing care. Continue tracheostomy suctioning/chest physiotherapy and review in Neurosurgery out patient department after two months. Ext.A8 is another discharge summary which would show that the petitioner was again admitted in Amrita Institute*

> *of Medical Sciences and Research Centre on 10.06.02 for removal of tracheostomy tube. Tracheostomy tube was removed after admission. He did not develop respiratory distress and he was discharged on 12.06.02 with advise to continue limb physiotherapy and nursing care and also review in Neurosurgery out patient department after two months. "*

5. Based on the certified monthly salary, the Tribunal reckoned the same as Rs.8878/-. The claimant at the time of the accident was 59 years and by virtue of 90% disability, he was not in a position to resume duty and it has resulted in much loss of income till the date of retirement at the age of 60 years. Hence the said extent in toto was ordered to be satisfied by the Tribunal granting a sum of Rs.92056/-.

6. In respect of the remaining period, the compensation for disability was worked out reckoning Rs.2000/- as notional monthly income and adopting the multiplier of '5'. The learned Counsel for the appellant submits that in the case of a person having crossed the age of 59 years, the appropriate multiplier should have been '9'. This is opposed by the learned Standing Counsel for the Insurance Company pointing out that claimant,

having been compensated completely till the date of retirement from service, granting the entire loss of income of Rs.92056/- any further compensation, if at all to be granted, has to be confined to the post-retirement period, reckoning the probable income on a notional basis, also taking note of the monthly pension obtainable. The multiplier in such circumstance could only be '5' as per the second schedule, submits the learned Counsel .

7. But going by the verdict passed by the Apex Court in **2010 (2) KLT 802 (Sarla Verma vs. Delhi Transport Corporation)**, the appropriate multiplier in the case of a person who has crossed the age of 60 would be '7'. Considering the fact that the accident was in the year 2002 and giving credit to the economic circumstances prevailing at that point of time and also the probable engagement/avocation, which could have been pursued by the appellant/claimant, we find it fit and proper to reckon the monthly income after retirement on a notional basis at Rs.3000/- instead of Rs.2000/-.

8. Admittedly, there is no dispute with regard to the fact

that the claimant was suffering from 90% disability and was not in a position to do any job. As such, the disability requires to be reckoned as **100%** for working out the loss of earning and the appropriate multiplier is '7' based on the verdict passed by the Supreme Court. On re-working the compensation, it comes to Rs.(3000 x 12 x 7 = **2,52,000/-).** After giving credit to the sum of Rs.108000/- awarded by the Tribunal, the balance comes to **Rs.1,44,000/-.** It is seen that the Tribunal has awarded only a sum of Rs.30000/- as compensation towards loss of amenities and enjoyment in life. It remains a fact that the claimant is no more since he passed away on 26.10.2011. In other words, he was virtually suffering from the ordeal for nearly 10 years. We find it appropriate to grant a further sum of **Rs.20000**/- so as to make it Rs.50000/-. No modification is required under any other head.

8. In the above circumstance, the balance compensation payable will come to **Rs.1,64,000**/- (Rupees one lakh sixty four thousand only). But we find that the Tribunal has awarded interest only at the rate of 7% per annum. Considering the

prevailing rate of interest being awarded (based on the verdict passed by the Apex Court), we find it appropriate to grant interest **on the additional amount** at the rate of **9%** per annum from the date of the petition till realisation. Since policy is admitted, we direct the Insurance Company to have the due amount deposited within 'one month' from the date of receipt of a copy of the judgment.

The appeal is disposed of.

P.R. RAMACHANDRA MENON,
JUDGE

ANIL K. NARENDRAN,
JUDGE

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