

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.N. RAVINDRAN
&
THE HONOURABLE MR. JUSTICE K. ABRAHAM MATHEW

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

MACA.No. 455 of 2010

AGAINST THE AWARD IN OPMV 647/2007 of M.A.C.T., KOZHIKODE

APPELLANTS/PETITIONERS:

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1. KAMALAM,
W/O. VASU, PARANGOTT HOUSE,
P.O KURUVATTOOR, KOZHIKODE DISTRICT.
 2. ANITHA.K, W/O. LATE RAJAN, PARANGOTT HOUSE
P.O KURUVATTOOR, KOZHIKODE DISTRICT.
 3. PANJU, D/O. LATE RAJAN, PARANGOTT HOUSE,
P.O KURUVATTOOR, KOZHIKODE DISTRICT.
 4. KRISHNASREE, D/O. LATE RAJAN,
PARANGOTT HOUSE, P.O KURUVATTOOR, KOZHIKODE DISTRICT

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS/RESPONDENTS:

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1. A.FATHIMA,
W/O.ABOOBACKER,
ATHIKOTE HOUSE, P.O. IYYAD, KOZHIKODE DISTRICT.
 2. E.P.SABEESH KUMAR, S/O.VASU.E.P,
PEROOR VEEDU, KINALOOR PO, KOZHIKODE.
 3. THE NEW INDIA ASSURANCE CO.LTD.,
SHAFEER COMPLEX, KANNUR ROAD, KOZHIKODE-1.

R3 BY ADV. SRI.K.C.SANTHOSHKUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.N.RAVINDRAN & K.ABRAHAM MATHEW, JJ.

M.A.C.A.No.455 OF 2010

Dated this the 1st day of September, 2015

JUDGMENT

P.N.RAVINDRAN J.

The appellants are the claimants in OP(MV)No.647 of 2007 on the file of the Motor Accidents Claims Tribunal, Kozhikode. They are the mother, wife and daughters respectively of late Rajan who succumbed to the injuries sustained by him in a motor accident that took place at about 7 p.m on 15.10.2006. The appellants instituted OP(MV) No.647 of 2007 contending that the accident took place on account of the rash and negligent driving of a stage carriage bus owned by the first respondent, driven by the second respondent and insured with the third respondent. Before the Motor Accidents Claims Tribunal they claimed a total sum of Rs.5,00,000/- as compensation.

2. Respondents 1 and 2, the owner and driver respectively of the stage carriage bus entered appearance through counsel, but they did not file a written statement. The third respondent insurer alone filed a written statement. After admitting the insurance coverage of the vehicle and denying the allegation that the driver of the stage carriage bus was negligent, it contended that the compensation claimed is exorbitant and excessive. Before the Motor Accidents Claims Tribunal, the wife of the victim was examined as PW1 and the person on whose information Ext.A1 FIR was

registered was examined as PW2. The claimants also produced and marked Exts A1 to A4. On the side of the respondents no evidence was adduced. The Tribunal after considering the rival contentions held that the accident took place on account of the rash and negligent driving of the stage carriage bus by the second respondent. The Tribunal also held that Rajan, the predecessor-in-interest of the claimants, died as a result of the injuries sustained by him in the motor accident, awarded the sum of Rs.2,97,500/-as compensation under various heads and directed the third respondent insurer to deposit the said amount together with interest and costs. The claimants have, dissatisfied with the quantum of compensation awarded by the Tribunal, filed this appeal.

3. We heard Sri.Salil Narayanan, learned counsel appearing for the appellant and Sri.K.C.Santhosh Kumar, learned counsel appearing for the third respondent. We have also gone through the pleadings and the materials on record. The fact that the deceased died on account of the injuries sustained by him in a motor accident is not in dispute. The fact that the victim was aged 50 years is also not in serious dispute. The accident took place on 15.10.2006. The Motor Accidents Claims Tribunal has however awarded only the sum of Rs.7,500/- under the head loss of consortium, Rs.15,000/-under the head loss of love and affection and Rs.3,000/- under the head funeral expenses. In the light of the binding decision of the Apex Court in **Rajesh v. Rajbir Singh (2013(3)KLT 89(SC)** and having regard to the fact that the accident took place on 15.10.2006, we are of the opinion that the compensation

awarded under the heads loss of consortium, loss of love and affection and funeral expenses deserves to be enhanced. We accordingly, award a further sum of Rs.92,500/- as compensation under the head loss of consortium to the second appellant/second claimant, Rs.22,000/- under the head funeral expenses and a consolidated sum of Rs.1,10,000/- over and above the sum of Rs.15,000/- awarded under the head loss of love and affection to the children and mother of the victim.

4. The Tribunal has awarded the sum of Rs.2,60,000/- as compensation under the head loss of dependency. The deceased was admittedly aged 50 years. The Tribunal has awarded compensation under the head loss of dependency taking the monthly income of the deceased as Rs.2,500/-, for the reason that no evidence had been adduced to prove his monthly income. The fact that the deceased was maintaining a family consisting of himself, his wife and two daughters one of whom was a minor on the date of accident is not in dispute. It is also stated that his aged mother was also dependent on him. The Apex Court has in **Ramchandruppa v. The Manager, Royal Sundaram Alliance Insurance Company Limited (AIR 2011 SC 2951)** awarded compensation for loss of dependency in the case of a coolie who was from the State of Karnataka taking his monthly income as Rs.4,500/-. Having regard to the fact that the victim of the accident was residing in State of Kerala where wages are higher and further the fact that he was maintaining a family consisting of himself, his wife and two daughters and was also supporting his mother, we are of the opinion that on a modest estimate, the monthly income of the

deceased can be taken as Rs.4,500/-. Computed on that basis, the compensation payable under the head loss of dependency will be $\text{Rs.}4,500 \times 12 \times 13 \times \frac{3}{4} = 5,26,500/-$. The Tribunal has awarded only Rs.2,60,000/- as compensation under the head loss of dependency. We accordingly award a further sum of Rs.2,66,500/- as compensation under the head loss of dependency. The compensation awarded under the other heads does not in our opinion call for any enhancement.

We accordingly allow this appeal and award in addition to the compensation awarded by the Motor Accidents Claims Tribunal, a further sum of Rs.4,69,000/-(Rupees Four lakhs sixty nine thousand only) as compensation to the appellants. The third respondent insurer shall deposit the said amount together with interest at 7.5% per annum from the date of petition within two months from today. On such deposit being made, a sum of Rs.25,000/- and proportionate interest thereon shall be released to the first appellant/first claimant and the balance amount shall be released in equal shares to appellants 2 to 4/claimants 2 to 4. The parties shall suffer their costs.

Sd/-

**P.N.RAVINDRAN,
JUDGE**

Sd/-

**K.ABRAHAM MATHEW,
JUDGE**

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/True copy/

P.S.to Judge

The figure "Rs.4,69,000/-(Rupees Four lakhs sixty nine thousand only)" occurring in the operative portion of the judgment dated 01.09.2015 in M.A.C.A.455/2010 is corrected as "Rs.4,91,000/-(Rupees four lakhs ninety one thousand only)" as per order dated 11.03.2016 in I.A.3683/2015 in M.A.C.A.455/2010.

Sd/-

Registrar (Judicial)