IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

MACA.No. 1190 of 2014 ()

AGAINST THE AWARD IN OPMV 846/2002 of MACT MUVATTUPUZHA DATED 15-11-2013

APPELLANTS/PETITIONERS:
----

1. RAMANI
   W/O.LATE RAJAN @ DHARMARAJ
   RESIDING AT RAJ BHAVAN HOUSE, CHENKAL, KALADY.

2. RAHUL RAJ
   S/O.LATE RAJAN @ DHARMARAJ
   RESIDING AT RAJ BHAVAN HOUSE, CHENKAL, KALADY.

3. KEERTHI RAJ
   D/O.LATE RAJAN @ DHARMARAJ
   RESIDING AT RAJ BHAVAN HOUSE, CHENKAL, KALADY.

BY ADVS.SMT.ANEY PAUL
SRI.PHILIP J.VETTICKATTU

RESPONDENTS/RESPONDENTS:
----

1. K.J.VINCENT
   KUNNEL HOUSE, NELLIMATTOM, KOTHAMANGALAM.

2. K.P.VARGHESE
   S/O.PAILY, KUNNATTUKUDIYIL HOUSE, THRIKKARIYOOR
   KOTHAMANGALAM.

3. THE BRANCH MANAGER
   THE ORIENTIAL INSURACNE COMPANY LTD, KOTHAMANGALAM.

R3 BY ADV. SRI.GEORGE CHERIAN (SR.)
R3 BY ADV. SMT.K.S.SANTHI
R3 BY ADV. SMT.LATHA SUSAN CHERIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

M.A.C.A. No.1190 of 2014

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=

Dated this the 1st day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in O.P(MV) No.846 of 2002 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha. They are the wife, son and daughter respectively of late Rajan @ Dharmaraj who succumbed to the injuries sustained by him in a motor accident that took place at about 10.30 p.m on 26.11.2001 while he was walking along the side of the Kanjoor-Kalady road. The third respondent is the insurer of the motor car involved in the accident. The injured pedestrian was admitted in Little Flower Hospital, Angamaly, from where he breath his last at about 3 am on 27.11.2001. The claimants had in O.P.(MV) No.846 of 2002 prayed for award of the sum of ₹10,00,000/- as compensation under various heads.

2. They contended that the accident took place on account of the rash and negligent driving of the motor car by the second respondent, the driver of the motor car. The deceased was at the time of the accident employed as a driver in PMM Hospital, Kalady. The claimants had in the claim petition averred that he was earning a monthly salary of ₹4,500/-. The first respondent, the owner of the motor car did not enter appearance and he was set ex-parte. The second respondent, its driver, entered appearance and filed a

written statement contending that the accident took place when the deceased suddenly tried to cross the road. The third respondent insurer entered appearance and filed a written statement contending that the deceased was injured when he was knocked down by an unknown vehicle and that a false case has been put forward with the help of an advocate, implicating the second respondent driver as the person responsible for the accident. It was contended that the charge sheet laid by the police cannot therefore be relied on. The insurer also contended that the compensation claimed is exorbitant. Before the the Motor Accidents Claims Tribunal Exts. A1 to A6 were produced and marked on the side of the claimants. They also examined the employer of the victim as PW1 and a passenger who was travelling in the motor car involved in the accident as PW2. The documents produced on the side of the claimants included Ext.A1 salary certificate dated 29.10.2004 issued by PW1. On the side of the respondents Exts.B1 to B4 were produced and marked and RW1 to RW3 were examined.

3. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the rash and negligent driving of the second respondent. The Tribunal held that as the motor vehicle was covered by a valid policy of insurance and the insurer does not dispute its liability to pay compensation, the third respondent is liable to indemnify the owner of the motor car. As regards the compensation payable, the Motor

Accidents Claims Tribunal held that no reliance can be placed on Ext.A1 salary certificate for the reason that the attendance register and muster roll are not produced. The Tribunal accordingly proceeded to award compensation for loss of dependency taking the monthly income of the deceased who was aged 42 years at the time of the accident, as ₹2,000/- and the multiplier as 14. The Tribunal also added 30% to the annual income towards future prospects. The Tribunal thus awarded a total sum of ₹2,91,200/- under the head loss of dependency. The Tribunal also awarded the sum of ₹10,000/- towards pain and suffering, ₹5,000/- under the heard funeral expenses, ₹1,000/- towards transportation expenses, ₹ 5,000/- towards loss to the estate, ₹40,000/- towards loss of consortium to the first claimant and ₹25,000/- each to claimants 2 and 3 towards loss of love and affection. The Tribunal thus awarded a total sum of ₹4,02,200/- as compensation to the claimants and directed the third respondent insurer to deposit the said amount together with interest at the rate of 6% per annum from the date of petition (13-06-2002) till realisation along with proportionate costs. The claimants have, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

4. We heard Smt. Aney Paul, learned counsel appearing for the appellants and Smt. K.S. Santhi, learned counsel appearing for the third respondent. We have also gone through the pleadings and the materials on record. Ext.A1 salary certificate discloses that the

deceased who was aged 42 at the time of the accident was engaged as a driver in PMM Hospital, Kalady. Ext.A1 was proved by examining PW1. Ext.A1 discloses that the deceased was earning a monthly income of ₹2,500/- per mensem. Ext.A1 salary certificate also discloses that PW1 is the proprietor of the said hospital. The Motor Accidents Claims Tribunal however ignored Ext.A1 on the sole ground that the muster roll and attendance register maintained in the hospital are not forthcoming. The Tribunal thereafter proceeded to award compensation for loss of dependency taking the monthly income of the deceased at the time of the accident as ₹2,000/-. The appellants had in column 6 of the claim petition stated that the deceased was earning a monthly income of ₹4,500/- and in column 25 they had stated that the deceased was the only earning member of his family and he used to contribute ₹4,500/- to the family. The occupation of the deceased was mentioned as driver in column 4 of the application.

5. The second respondent did not in his written statement specifically deny the fact that the deceased was a driver by profession. All that was stated is that he is not aware of the contents of columns 3, 4, 5, 6 and & 7 of the claim petition which inter alia deal with the age of the deceased, his occupation and his monthly income. Though the third respondent insurer had in its written statement contended that the deceased was not earning more than ₹1,500/- per month, PW1 who had issued Ext.A1

certificate dated 29.10.2004, certifying that the deceased was drawing ₹4,500/- per mensem as salary from 01.04.2001, has spoken to the fact that the deceased was his personal driver for the past 20 years. Nothing has been brought out in his cross examination to discredit that version or to impeach the authenticity and genuineness of Ext.A1. The testimony tendered by PW1, a doctor by profession (he is also the proprietor of the hospital) is to the effect that the deceased was his personal driver for more than two decades.

6. Such being the situation, we are of the opinion that the Motor Accidents Claims Tribunal erred in brushing aside Ext.A1 on the short ground that the muster roll and attendance register maintained in the hospital are not produced. The Tribunal ought to have in our opinion, in the light of the testimony tendered by PW1 and Ext.A1 certificate, awarded compensation under the head loss of dependency taking the monthly income of the deceased as ₹4,500/- instead of adopting a notional monthly income of ₹2,000/-. The deceased was aged 42 years at the time of the accident. It is now well settled by the decision of the Apex Court in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)] that even in the case of death of employees in the unorganized sector there must be an addition of 30% of the annual income of the deceased towards future prospects. The multiplier to be adopted in the case of a person aged 42 is 14. Thus computed, the compensation payable to the

claimants towards loss of dependency will be ₹4,500/-+₹1,350 = ₹5,850/- less ₹1,950/- (1/3rd of ₹5,850/-) = ₹3,900/- X 12 X 14 = ₹6,55,200/-. The Tribunal has by impugned award awarded only the sum of ₹2,91,200/- as compensation towards loss of dependency. We accordingly award an additional sum of ₹3,64,000/- as compensation towards loss of dependency over and above the sum of ₹2,91,200/- awarded by the Tribunal.

7. The impugned award discloses that the Motor Accidents Claims Tribunal has awarded only ₹40,000/- to the wife (the first appellant) who lost her husband when she was aged 36. The Apex Court has in **Rajesh v. Rajbir Singh** (supra) held that in the case of death of the husband, the wife should invariably be awarded the sum of ₹1,00,000/- as compensation for loss of consortium. In the case on hand, the Tribunal has awarded only the sum of ₹40,000/- under that head. We accordingly award an additional amount of ₹60,000/- as compensation under the head loss of consortium to the first appellant/first claimant. The Motor Accidents Claims Tribunal has by the impugned award awarded only the sum of ₹20,000/- each to the claimants 2 and 3 towards loss of love and affection. Appellants 2 and 3 are twins and were aged 10 years at the time of the accident. In the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh** (supra), we are of the opinion that they are entitled to a further sum of ₹50,000/- under that head thereby raising the compensation awarded under the head loss of

love and affection as ₹1,00,000/- in all to the claimants 2 and 3. The compensation awarded under other heads cannot in our opinion be said to be meagre or inadequate and no interference is called for with the award of compensation under the other heads.

We accordingly award to the appellants/claimants an additional compensation of ₹3,64,000/- + ₹60,000/- + ₹50,000/- = ₹4,74,000/- over and above the compensation awarded by the Tribunal. The third respondent insurer is directed to deposit the said sum of ₹4,74,000/- (Rupees four lakhs seventy four thousand) in the Motor Accidents Claims Tribunal together with interest at 9% per annum from the date of petition (13.06.2002) till the date of deposit, within two months from today. Upon such deposit being made, the sum of ₹60,000/- together with proportionate interest thereon shall be released to the first appellant/first claimant. The balance amount shall be disbursed to the appellants in equal proportion. No costs.

sd/-
P.N.RAVINDRAN, JUDGE

sd/-
ANU SIVARAMAN,JUDGE

kp/-

True copy

P.A.To Judge