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 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

MACA.No. 2501 of 2015 ()

(AGAINST THE AWARD IN OPMV 1370/2014 of M.A.C.T.,ERNAKULAM DATED 09-04-2015)

APPELLANTS/PETITIONERS:
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1. PUSHPA AGED 63 YEARS
W/O. LATE A.K.DILEEPAN, ATTUVAPARAMBIL VEEDU
CHERANALLOOR P.O., ERNAKULAM DISTRICT, PIN-682034.

2. PRADEEP AGED 42 YEARS
S/O. A.K.DILEEPAN, -DO-

3. PRAJEESH AGED 40 YEARS
S/O. LATE A.K.DILEEPAN, -DO-

4. PRSANTH AGED 38 YEARS
S/O. LATE A.K.DILEEPAN, -DO-

BY ADV. SRI.ALEX THANNIPPILLY

RESPONDENTS/RESPONDENTS:
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1. K.M.NASSARUDHEEN
S/O. ABDUL MAJEED, PALLIKUNNIL HOUSE, 9/320
HIGHWAY BYEPASS ROAD, NETTOOR P.O., MARADU
ERNAKULAM, PIN-682040.

2. GOPAN G.
S/O. P.K.GOPI, MANDAPATHIN KUZHIYIL, KURATHIKADU
THEKKEKARA P.O., MAVELIKKARA, PIN-690107.

3. UNITED INIDIA INSURANCE CO. LTD.
HANDICRAFTS BUILDING, GANDHI ROAD, WILLINGTON ISLAND
ERNAKULAM-682003.

R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R3 BY ADV. SRI.P.JACOB MATHEW
BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 27-10-2015, 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.2501 OF 2015

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Dated this the 27th October, 2015

<u>J U D G M E N T</u>

<u>P.R. Ramachandra Menon, J.</u>

The claimants in O.P.(MV) No.1370 of 2014 on the file of the MACT, Ernakulam are the appellants before this Court. Grievance is as to the inadequacy of compensation awarded in respect of the demise of a person aged 72 years, who was the husband of the first appellant and father of the other appellants.

2. When the deceased was standing on the side of the road on 22.10.2013, he was knocked down by a container lorry bearing No.KL.7V.2743 causing fatal injuries. Though the victim was taken to the Amrita Hospital, Edappally, he succumbed to the injuries on the same date, which loss was sought to be compensated by filing the claim petition by the appellants. The

owner and driver of the vehilce involved did not contest the matter, though entered appearance. The claim was sought to be resisted by the Insurance Company on general grounds as no violation of the statutory conditions/policy conditions was pointed out.

3. The evidence adduced before the Tribunal consists of documents produced as Annexure A1 to A14 and no oral evidence was adduced by either side. On evaluating the facts and figures, the Tribunal arrived at a finding that it was only because of the negligence on the part of the driver of the lorry that the accident occurred and the Tribunal proceeded with further steps fixing compensation accordingly.

4. Admittedly, the deceased was a person aged about 72 years and the claim of the appellants was that he was working as a watchman with a monthly salary of Rs.5100/-, as shown in Ext.A9 salary certificate. Observing that the same was not proved, the Tribunal sought to reckon the monthly salary as Rs.5000/- (almost as claimed, but for a difference of Rs.100/-). It was observed that only the first appellant, who was the widow

of the deceased could be held as the dependent and dependency was worked out taking the multiplier of '3' and reducing 1/3rd of the income towards personal expenses of the deceased; thus granting a total sum of Rs.120024/-(which by itself is not correct as the correct amount should have been Rs.120000/-). A total sum of Rs.3,80,024/- was granted as compensation with interest at the rate of 9% from the date of petition, till realisation, which is sought to be enhanced by filing this appeal.

5. Heard the learned Counsel for the appellants as well as the learned Standing Counsel for the third respondent/Insurance Company. Since policy is admitted, this Court does not find it necessary to issue notice to the respondents 1 and 2 and notice is dispensed with in so far as the said respondents are concerned. The only point to be considiered is whether the compensation worked out by the Tribunal is correct and in accordance with law, based on the materials on record, to be termed as a 'just' award.

6. The learned Counsel for the appellants asserted that the Tribunal went wrong in reckoning only '3' as the multiplier and

that the proper multiplier should have been '5'. We find considerable force in the said submission and according to us the loss of dependency should have been worked out taking the the multiplier of '5'. But the fact remains that the appellants 2 to 4, who were grown up sons aged 41, 39 and 37 years respectively were not dependents of the deceased aged 72 years and dependency would be there only in respect of the first appellant/widow of the deceased. This being the position, only 50% of the income could have been reckoned as contribution to the family. On re-working the compensation towards loss of dependency as above,, the amount comes to Rs.1,50,000/- (5000 x 12 x 50/100 x 5). This results in deficit compensation of **Rs.30000/-** (as rounded), which is liable to be paid to the appellants.

7. It is seen that the Tribunal has not awarded any amount towards 'pain and suffering' and also towards damages to cloth and articles. Even though the death occurred on the same date, the appellants/claimants were required to be compensated under these Heads as well. However, this Court finds that the Tribunal

has awarded Rs.10000/- towards transport expenses, though no material was produced to sustain the said extent. Admittedly, the accident occurred near Cheranelloor and the deceased was taken to Amrita Hospital, Edappally. The place of residence of the deceased as well as the claimants was at Chernanelloor itself and as such, the maximum compensation under this head could have been only Rs.1000/- . The question is whether any deduction is to be made in this appeal; more so when no appeal has been preferred by the Insurance Company. . Considering the fact that the Tribunal has not awarded any amount towards 'pain and suffering' and also towards 'damage to cloths and articles' , we find that the excess amount under the head transportation expenses could be set off under the above heads and no deduction needs to be made under this head.

8. This Court is aware of the decision rendered by the Apex Court in ***Rajesh vs. Rajbir Singh*** [**2013 (3) KLT 89 (SC)]** with regard to compensation payable towards loss of consortium and loss of love and affection. In respect of loss of

consortium, the Tribunal has awarded a sum of Rs. One lakh and towards loss of love and affection also, a sum of Rs. One lakh was awarded. A Division Bench of this Court as per the subsequent decision reported in **2014 (1) KLT 10 (Valsamma vs. Binu Jose)**has held that, for awarding compensation under these heads, the age of the widow/deceased is also relevant. In the instant case, the age of the first respondent was about 62 years and the deceased was about 72 years. The observation made by the said Bench was of course with reference to the law declared by the Supreme Court in ***Rajesh vs. Rajbir Singh*** [**2013 (3) KLT 89 (SC)]** and also the decision rendered by the Apex Court in Civil appeal 7368 of 2013 as referred to in paragraph 16. The observations in paragraphs 14 to 16 are extracted below so as to have a proper course of action in the instant case.

> *"14. In the decision reported in Rajesh (supra), the Honorable Supreme Court has considered the various aspects which has to be considered while awarding compensation under the head 'loss of consortium' which reads as follows:*

> “In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head.”

15. As per Concise Law Dictionary by P. Ramanatha Iyer, “consortium means, companionship, love, affection, *comfort, mutual services, sexual intercourse. All these things belong to the married state. Taken together they make up consortium. (Smt.Harvinder Kaur v.Harmander Singh Choudhry (AIR 1984 Delhi 66))". It further says "consortium connotes only the husband and the wife and the companionship, fellowship, or togetherness of the husband and the wife. (Farooque v. Municipality Corporation of the City of Ahmedabad & Ors. (AIR 1985 Gujarat 114)". Loss of consortium consists of several elements encompassing not only material services but such intangibles as society guidance, companionship and sexual relations. Damages for loss of consortium are commonly sought in wrongful death actions or when spouse has been seriously injured through the negligence of another or by spouse against third persons alleging that he or she has caused breaking up of marriage. Cause of action for consortium occasioned by injury to marriage partner is a separate cause of action belonging to the spouse of the injured married partner and though derivative in the sense of being occasioned by direct injury to the spouse who has lost the consortium.*

16. In the case Rajesh (supra), it was observed that it would be only just and reasonable that courts award at least `1,00,000/- for loss of consortium. That was a case where the deceased was aged only 33 years and the unfortunate widow was still younger. Even in that case, Honourable Supreme Court has awarded only Rs.1,00,000/- under the head 'loss of consortium' though it was *observed in that decision that at least Rs.1,00,000/- has to be awarded under the head 'loss of consortium'. That indicates that in appropriate cases, court should award at least a minimum of Rs.1,00,000/- as compensation under the head 'loss of consortium' and not to stick on to the principle that only conventional amount has to be awarded under these heads. The age of the widow and age of the deceased are relevant factors while considering the question of compensation to be awarded for loss of consortium. That may be the reason why even in a case where the deceased was only 33 years, the Honourable Supreme Court has fixed the quantum of compensation payable under the head 'loss of consortium' as Rs.1,00,000/-. Further in another decision of Supreme Court in Minu Rout and another v. Staya Pradyumna Mohapatra & Ors. (Civil Appeal No.7368/2013 dt.2.9.2013) awarded only Rs.50,000/- under all conventional amounts including loss of consortium, relying on the decision reported in Kerala State Road Transport Corporation v. Susamma Thomas (1994 (1) KLT 67 (SC) = (1994) 2 SCC 176). It is also to be borne in mind that the amount awarded under the conventional heads should not exceed more than the amounts awarded under other heads like special damages and dependency etc. ”*

After referring to the relevant provisions of law and also the principles evolved by the Apex Court and further observing that the deceased was aged only 29, the loss of consortium of Rs.15000/- awarded by the Tribunal was enhanced and limited to Rs.50000/-. The Bench also observed that the amount awarded under the conventional heads should not exceed more than the amounts awarded under other heads like special damages and dependency etc.

9. Coming to the case in hand, it is seen that a sum of 'Rs.one lakh' was awarded towards 'loss of consortium' to the first appellant/first claimant, who was admittedly about 62 years, that too, in respect of a death of a person aged about 72. Yet another sum of Rs. one lakh has been awarded towards **'loss of love and affection'** for all the claimants put together. Taking these two figures, this Court finds that the appellants are adequately compensated under these heads and as such the same does not require any modification.

10. In the above circumstances, the balance compensation payable to the appellants is fixed as **Rs.30000/- (Rupees thirty thousand only),** which shall be satisfied with interest

at the rate of 9% per annum from the date of petition till deposit. Since the policy is admitted, the Insurance Company is directed to satisfy the said amount within one month.

The appeal is disposed of.

P.R. RAMACHANDRA MENON,
JUDGE

ANIL K. NARENDRAN,
JUDGE

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