

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

MACA.No. 1492 of 2014 ()

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AGAINST THE AWARD IN OPMV 2071/2011 of M.A.C.T.,ERNAKULAM DATED 04-12-2013**

APPELLANT(S)/3RD RESPONDENT IN OPMV 2071/2011:

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NATIONAL INSURANCE COMPANY LTD.
REPRESENTED BY ITS MANAGER, REGIONAL OFFICE, M.G.ROAD
ERNAKULAM.**

BY ADV. SRI.LAL GEORGE

RESPONDENTS/CLAIMANTS 1 AND 2 AND R 1 AND 2 IN MVOP 2071/2011.:

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- 1. ROSILY HOMAIN PAPPALI, AGED 20 YEARS
D/O.LATE RONALD HAROLD PAPPALI, PAPPALI HOUSE
VAZHAKKALA P.O., KAKKANAD, ERNAKULAM-682 030.**
 - 2. MASTER SAVIN PAPPALI, AGED 16 YEARS (MINOR)
S/O.LATE RONALD HAROLD PAPPALI, PAPPALI HOUSE
VAZHAKKALA P.O., KAKKANAD, ERNAKULAM
REPRESENTED BY HIS SISTER, ROSILY HOMAIN PAPPALI
D/O.LATE RONALD HAROLD PAPPALI, PAPPALI HOUSE
VAZHAKKALA P.O., KAKKANAD, ERNAKULAM-682 030.**
 - 3. MARY V.O.
NOBLE NIVAS, GOLDEN STREET, VADUTHALA
KOCHI-682 023.**
 - 4. ANIRUDHAN V.T.
S/O.V.T.NARAYANAN, VADAKKE THALAKKAL HOUSE, PURATHUR
PADINJAREKKARA P.O., PIN-686 671.**

**R1&2 BY ADVS. SRI.ANIL S.RAJ
SRI.A.N.SANTHOSH
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.ANILA PETER
SRI.J.VIVEK GEORGE**

R3 BY ADV. SRI.P.T.SEBASTIAN

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A.No.1492 of 2014

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Dated this the 20th day of August, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the third respondent in O.P.(M.V)No.2071 of 2011 on the file of the Motor Accidents Claims Tribunal, Ernakulam. Respondents 1 and 2 are the claimants and respondents 3 and 4 are respondents 1 and 2 respectively therein. Respondents 1 and 2 had initially filed O.P.(M.V)No.1491 of 2003 before the Motor Accidents Claims Tribunal under section 166 of the Motor Vehicles Act, 1988 claiming compensation for the death of their father Ronald Herold Pappali and their mother Nisha Pappali in a motor accident that took place on 10.1.2000. The victims of the accident were travelling in the motor car bearing registration No.KL-07/Y-999 when it collided with a mini lorry bearing registration No.KL-7/M-5686 owned by the third respondent and driven by the fourth respondent herein. O.P.(M.V) No.1491 of 2003 was dismissed as withdrawn, reserving liberty with the claimants to file an application for compensation under section 163 A of the Motor Vehicles Act, 1988. Respondents 1 and 2 thereupon filed O.P.(M.V)No.2071 of 2011 under Section 166 of the Motor Vehicles Act, 1988 claiming the sum of Rs.8,00,000/- as compensation for the death of their father.

2. Upon receipt of notice, the owner of the mini lorry entered appearance and filed a written statement contending that the accident took place on account of the negligence of the driver of the car viz., the father of the claimants. She also contended that the lorry was, on the relevant date, covered by a valid policy of insurance issued by the appellant herein. The fourth respondent herein filed a written statement raising more or less similar contentions. The appellants entered appearance and filed a written statement contending inter-alia that there was no negligence on the part of the driver of the lorry and that the driver of the car was negligent.

3. Before the Motor Accidents Claims Tribunal, an eye witness to the accident was examined as PW1 and Exts.A1 to A9 were produced and marked on the side of the claimants. On the side of the respondents, the driver of the lorry was examined as RW1 and Exts.B1 to B4 were produced and marked. The Motor Accidents Claims Tribunal considered the rival contentions and held relying on the police records that the insurer has not proved that the deceased driver of the motor car was negligent. The Tribunal thereafter awarded the sum of Rs.5,44,500/- as compensation. The said amount consisted of the sum of Rs.5,40,000/- awarded as compensation for loss of dependency in accordance with the Second Schedule to the Motor Vehicles Act, 1988, the sum of Rs.2,000/- awarded towards funeral expenses and the sum of Rs.2,500/- awarded towards loss to the estate. In O.P.(M.V)

No.2074 of 2011, the claim petition filed by the respondents claiming compensation for the death of their mother, the Tribunal awarded the sum of Rs.4,32,000/- under the head loss of dependency in accordance with the Second Schedule to the Motor Vehicles Act, 1988, the sum of Rs.2,000/- towards funeral expenses and the sum of Rs.2,500/- towards compensation for loss to the estate. The appellant insurer was directed to deposit the said amount together with interest at 6% per annum from the date of petition and proportionate costs. The appellant has, aggrieved thereby, filed this appeal. The main ground raised in the instant appeal is that the Tribunal ought to have deducted 1/3rd of the amount arrived at by applying the Second Schedule to the Motor Vehicles Act, 1988.

4. We heard Sri.Lal George, learned counsel appearing for the appellant and Sri.Anil S.Raj, learned counsel appearing for respondents 1 and 2. It is not in dispute that the claim petition in which the impugned award was passed is one filed under section 163 A of the Motor Vehicles Act, 1988. It is also not in dispute that the claimants had earlier filed O.P.(M.V)No.1491 of 2003 under section 166 of the Motor Vehicles Act, 1988, claiming compensation for the death of their parents and it was dismissed as withdrawn with liberty to file a fresh application for compensation under section 163 A of the Motor Vehicles Act, 1988. The Motor Accidents Claims Tribunal has awarded compensation applying the Second Schedule to the Motor Vehicles Act,

1988. In the case of fatal accidents, the amount of compensation arrived at applying the Second Schedule to the Motor Vehicles Act, has to be reduced by $1/3^{\text{rd}}$, considering the expenses the victim would have incurred for maintaining himself/herself had she/he been alive. In the instant case, the Tribunal has not reduced $1/3^{\text{rd}}$ of the amount awarded as compensation for loss of dependency. We are therefore of the opinion that the impugned award is liable to be modified to that extent.

We accordingly allow the appeal and reduce the compensation payable under the head loss of dependency to respondents 1 and 2 to $\text{Rs.}5,40,000 \times 2/3 = \text{Rs.}3,60,000/-$. Consequently, the total amount of compensation awarded by the Tribunal shall stand reduced to $\text{Rs.}3,60,000 + \text{Rs.}2000 + \text{Rs.}2500 = \text{Rs.}3,64,500/-$. The appellant insurer shall deposit the said amount together with interest at the rate awarded by the Tribunal within two months from today. Upon such deposit being made the amount deposited shall be released in equal shares to respondents 1 and 2. No costs.

Sd/-

P.N.RAVINDRAN
JUDGE

Sd/-

ANU SIVARAMAN
JUDGE

/true copy/

P.A. To Judge