IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

MACA.No. 2848 of 2015 ()

AGAINST THE AWARD IN OPMV 76/2010 of ADDL.D.C. & MACT, NORTH PARAVUR
DATED 09-04-2015

APPELLANT(S)/3RD RESPONDENT:

SHRIRAM GENERAL INSURANCE COMPANY LIMITED
JAIPUR, NOW REPRESENTED BY ITS LEGAL OFFICER
AZAD TOWER, AMMANCOIL CROSS ROAD, KOCHI-35.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONERS:

1. VARGHESE
S/O.IDIKKULA, EERIKKAL HOUSE, PATTANOM
VADAKKEKKARA P.O., PARAVUR TALUK, PIN 683518.

2. ANNAMMA
W/O.VARGHESE, EERIKKAL HOUSE, PATTANOM
VADAKKEKKARA P.O., PARAVUR TALUK, PIN 683518.

3. JOSEPH @ BINOY
S/O.VARGHESE, ERIKKAL HOUSE, PATTANOM
VADAKKEKKARA P.O., PARAVUR TALUK, PIN 683518.

4. MARIYAMMA @ BINCY
ERIKKAL HOUSE, PATTANOM, VADAKKEKKARA P.O.
PARAVUR TALUK, PIN 683518.

BY ADV. SRI.A.N.SANTHOSH
BY ADV. SRI.G.BALAMURALEEDHARAN (PARAVUR)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 25-11-2015, 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. 2848 of 2015
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Dated, this the 25th day of November, 2015

JUDGMENT

Ramachandra Menon, J.

The grievance projected by the appellant insurance company is in respect of the quantum of compensation awarded by the Tribunal to an extent of Rs.28,22,545/- in respect of the death of a person aged 28 years, who was a serving employee in one of the organs of defence of the country.

2. The factual sequence narrated in the proceedings reveal that the deceased was riding a motor cycle bearing No. KL 37 6281 on 30.01.2010 and when he reached the place of occurrence, a pick up van bearing No. KL 37 3577, which was coming from the opposite direction owned by the first respondent, driven by the second respondent and insured with the 3rd respondent before the Tribunal knocked him down causing fatal injuries leading to death of the deceased on the very same day. This was sought to be compensated

by filing claim petition by the appellants, who are the parents and siblings of the deceased.

3. The first and second respondents did not contest the matter and they were set exparte, as noted in paragraph 3 of the Award. The claim was resisted by the insurer alleging violation of the policy/statutory condition, raising a plea that the deceased was not wearing helmet at the relevant time and further that the pick up van was not having permit by virtue of which no liability could have been fastened on the shoulders of the Insurance Company. The evidence adduced before the Tribunal consists of the oral version of the second claimant as PW1 and the documents produced as Exts. A1 to A9. Based on the materials produced, particularly the police records and the oral deposition, a clear finding was rendered by the Tribunal that the deceased was actually wearing a helmet at the relevant time. It was also observed that, pursuant to filing of I.A. No. 3437 of 2014 by the insurer to cause production of permit particulars of the pick up van, a certificate was issued by the Joint RTO, Udumbanchola to the effect that no permit was required for the said vehicle, though it was a light vehicle, as the gross weight of the vehicle was below

3000 Kg. It was accordingly, that the matter was proceeded further, arriving at a clear finding that the accident occurred was due to the negligence on the part of the driver of the pick up van.

4. Regarding the quantum of compensation payable, there is no much dispute with regard to the age of the deceased, who was of 28 years. In the said circumstances, the multiplier of 17 was adopted. Ext. A5 is the salary certificate issued by the competent authority of the Central Government/Defence showing that the deceased was drawing Rs.17213/- p.m.. Based on the principles evolved by the Apex Court, providing 50% increase towards the future prospects in the case of persons upto 40 years of the age, the reckonable income was fixed as Rs.25,819.5/- per month. Since the deceased was a bachelor and parents alone could be the dependents, only 50% was reckoned as contribution towards the family. It was accordingly, that the monthly contribution to the family was fixed as Rs.12,909.5 and adopting the multiplier of '17', a sum of Rs.26,33,589/-, was awarded under the head 'loss of dependency'. The amounts awarded under other heads are;

Transportation expenses	: Rs. 5,000/-
Funeral expenses	: Rs. 25,000/-

Love and affection	: Rs.1,00,000/-
Loss of estate	: Rs. 50,000/-
Treatment expenses	: Rs. 8,956/-

Thus, a total sum of Rs.28,22,545/- was awarded, which was directed to be satisfied with interest @ 8% from the date of petition, which in turn is under challenge in this appeal.

5. Heard Mr. Mathew Jacob, the learned senior counsel appearing for the Insurance Company at length.

6. The learned senior counsel points out that the credibility/genuineness of Ext. A5 salary certificate produced from the part of the claimant was not examined by the Tribunal, more so when the amount mentioned in Ext. A5 is inclusive of all allowances. It is also stated that, no deduction towards income tax has been made by the Tribunal. Though there may be some force in the submission that the amount payable towards the income tax ought to have been deducted, no provision or binding precedent is brought to the notice of this Court to hold that the allowances payable to the employee is liable for deduction. Addition of 50% of salary towards future prospects is in conformity with principle laid by the Apex Court in **Sarla Varma Vs. Delhi**

Transport Corporation [2010 (2) KLT 802 (SC), which has been affirmed in **Reshma Kumari and Ors. Vs. Madan Mohan and another [2013 (2) KLT 304 (SC)].** Similarly, the amounts of Rs.25,000/- awarded towards funeral expenses and Rs.1,00,000/- towards loss of love and affection are in conformity with the principle laid down by the Apex Court in the decision rendered in **Rajesh Vs. Rajbir Singh [2013 (3) KLT 89 (SC)],** which hence do not require any interference. The only possible extent of challenge, if any, could be with regard to the necessity to reduce income tax; which going by the figures (after standard deductions/such other permissible deductions) could only be in the first slab of 10%. At the same time, it has to be considered that the deceased was an able bodied youth of 28 years, who was serving one of the organs of Defence, guarding the doors of the country. We are enjoying peaceful sleep at the cost of sleepless nights of the persons like the deceased who were/are serving the forces. In the said circumstances, the amount awarded by the Tribunal cannot be termed as arbitrary; more so, when 'interest' awarded is only **@8%,** whereas it could be, as on date, be 9%. We do not propose to make any enhancement in the rate of interest.

Considering the totality of the facts and circumstances, we find that no interference is warranted. The appeal fails and the same is dismissed accordingly.

Sd/-
**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-
**ANIL K. NARENDRAN,
JUDGE**

kmd

/True copy/

P.A to Judge