IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

MACA.No. 92 of 2008 ( )

(AGAINST THE AWARD IN OPMV 241/2002 of MACT, IRINJALAKUDA DATED 16-08-2007)

APPELLANTS/PETITIONERS:

1. BEEVATHU, W/O. LATE SAIDU MOHAMAMED, THARUPEEDIKAYIL, VELLANGALLORE, THRISSUR.

2. SUHARA, D/O. THARUPEEDIKAYIL SAIDU MOHAMMED, AGED 45, THARUPEEDIKAYIL VELLANGALLORE P.O.

3. RAZEEYA, D/O.
-DO- -DO-

4. FATHIMA, D/O. -DO- -DO-

5. ALI, S/O. LATE SAIDU MOHAMMED,
-DO- -DO-

BY ADV. SRI.T.N.MANOJ

RESPONDENTS/RESPONDENTS:

1. ROY GEORGE, S/O. KALAPPARAMBATH GEORGE, MATHILAKAM, THRISSUR DIST.

2. DASAN N.M., S/O. NELLUR MANAKKAL MANIKUTTY, VADAKKUMKARA VILLAGE, VELLANGALLORE DESOM.

3. THE MANAGER, NATIONAL INSURANCE CO. LTD., P.B.NO.70 MALIACKAL BUILDINGS, MAIN ROAD, IRINJALAKUDA.

R3 BY ADV. SMT.SARAH SALVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.

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M.A.C.A.No. 92 OF 2008

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Dated this the 29th September, 2015

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

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

Grievance of the appellants, who are legal heirs of the deceased, is that the Tribunal has not awarded any amount towards permanent disability (which is certified as 30% vide Ext.A7) holding that the petitioner had already bid farewell to this world due to some other reasons.

2. The deceased by name Saidu Mohammed was knocked down by a motor cycle bearing No.KBR.3186, owned by the first respondent, ridden by the second respondent and insured by the thrid respondent on 10.06.2001, at about 9.30. a.m., causing serious injuries which was sought to be compensated by filing claim petition by the injured. The first and second respondents chose to remain ex parte and the claim was sought to be resisted by the Insurance Company on general grounds, as no valid defence to avoid liability as envisaged under Section 149 (2) of

the M.V.Act, 1988 was available to the Insurance Company. When the claim petition was pending, the injured expired, suffering natural death due to some other reason, which was having no connection with the accident. In the said circumstance, the appellants herein, who are the legal heirs of the deceased entered in the party array by getting themselves impleaded by order in I.A.No.3574 of 2005 . No oral evidence was adduced from their side. Exts. A1 to A9 documents were marked from the side of the additional claimants. After considering the nature of injuries sustained, the Tribunal awarded a total sum of Rs.53200/-, which was ordered to be satisfied with interest at the rate of 7% per annum. However, no amount was awarded towards permanent disability certified as per Ext. A7, which made the appellants to challenge the same by way of this appeal.

3. Heard the learned Counsel for the appellants as well as the learned Standing Counsel for the Insurance Company.

4. During the course of hearing, the learned Counsel for the appellants submitted that the course pursued by the Tribunal

was not at all correct or proper in view of the law declared by a Division Bench of this Court in ***Jaya vs. Shaji*** (**2014 (1) KLT 31**), referring to the relevant provisions of law. The question considered in the said case was mainly with regard to the rights and liberties of the claimants, who were the legal representatives, to claim the amount in respect of 'pain and suffering' undergone by the victim, who subsequently bid farewell to this world. The position was held in favour of the claimants, awarding compensation and the same principle and logic have to be applied in the present case as well, submits the learned Counsel.

5. The question involved herein stands on a different pedestal and is not exactly with regard to the right of the legal representatives to claim the amount under any particular head, but is rather with reference to sustainability of granting any compensation in respect of the head-permanent disability, when the injured suffered a 'natural death' due to other reason. The very concept of insurance is to take the victim/dependent to the same pedestal, had the accident never occurred. The system of

working out compensation as per the law evolved in the English Courts was mainly with reference to 'Davies formula' (***Davies and Anr. vs. Powell Duffryn Associated Collieries Ltd.*** **(1942) Appeal Cases 601,** following a 'multiplier method' and the other one, subsequently evolved, was granting lumpsum compensation in ***Nance's case (Nance vs. British Columbia Electric Railway Co. Ltd (1951) Appeal Cases 601)*** . The desirability of following the multiplier method over and above the other one was considered in detail by the Apex Court as per the decision reported in **1994 (1) KLT 67 (K.S.R.T.C vs. Susamma Thomas)**. The Apex Court held that the multiplier method was the proper one for quantifying the compensation payable. By following the multiplier method, the purchasing power of the party concerned is quantified, applying the number of years, which could be reasonably reckoned for the purpose of fixing compensation. It is in this regard that the multiplicand is to be fixed taking note of the monthly/annual income and the appropriate multiplier based on the age factor.

6. It is true that the injured, who filed the claim petition

sustained disability as certified by Ext.A7 and it could be sought to be compensated by him, by adopting the appropriate multiplier, based on the age factor, who had already crossed the age of 65 years, which could be '5' as provided in the second **Schedule to the Motor Vehicles Act introduced with effect from 14.11.1994.** But the question is whether such amount can be claimed by the legal heirs , if the injured had sustained natural death. Since there is no dispute with regard to the fact that the death was having no nexus with the injuries sustained in the accident, it remains an undisputed fact that the injured would not have been survived any more for capitalization of the purchasing power with reference to particular number of years because of the injuries sustained. As such, this Court finds that the dictum sought to be relied on by the appellants is not applicable to the case in hand.

7. However, coming to the factual position, it is seen that the accident had occurred on 10.06.2001 and the claim petition was filed by the injured himself. It is also brought to the notice of this Court by the learned Counsel for the appellants that the

injured suffered a natural death only after 11.02.2002. This being the position, this Court finds that some indulgence can be shown. Considering the totality of the facts and circumstances, we find it appropriate to grant a further sum of **Rs. 10000/-** as compensation in respect of the disability sustained and we award the same. Since the policy stands admitted, the said amount shall be deposited by the Insurance Company with interest at the rate of 9% from the date of filing of the claim petition till the date of realisation .

The appeal is disposed of.

P.R. RAMACHANDRA MENON,
JUDGE

K. HARILAL,
JUDGE

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