IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

MACA.No. 1066 of 2010 ( )

AGAINST THE AWARD IN OPMV 363/2004 of M.A.C.T.,KOTTAYAM

APPELLANTS/PETITIONERS:
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1. PHILIP KURIAN ,S/O. KURIAN KURIAN
CHERUSSERIYIL HOUSE, NEAR S.L.P.L.P.SCHOOL
KUMARAKAM SOUTH KARA, KUMARAKAM VILLAGE.

2. SOBHANA PHILIP, W/O.PHILIP KURIAN
CHERUSSERIYIL HOUSE, NEAR S.L.P.L.P.SCHOOL,
KUMARAKAM.

BY ADV. SRI.K.A.HASHIM

RESPONDENTS/RESPONDENTS:
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1. PRASANNAN, S/O.SREEDHARAN
KUTTIKAL PURAYIDOM HOUSE, 15TH KADAVU BHAGOM
VELLOOR KARA, VELLOOR VILLAGE.

2. ABDUL JABBAR, FIROS MANZIL
VELLOOR PO, KOTTAYAM.

3. THE NEW INDIA ASSURANCE CO.LTD
PADINJAREKARA CHAMBERS, K.K.RAOD, KOTTAYAM.

R3 BY ADV. SRI.RENI ANTO KANDAMKULATHY
R1 & 2 BY ADV. SRI.NIDHIN REJI KURIAKOSE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.
- -
M.A.C.A.No.1066 OF 2010
- -
Dated this the 18th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants' son who was aged 18 years at the time of the accident late Sri. Christy died by sustaining serious injuries. The accident occurred on 30.4.2003 at about 12.45 p.m. The motor cycle in which he was travelling as pillion rider was hit by a bus bearing Reg.No.KRO 2737. He was immediately taken to Matha Hospital and was treated there upto 8.5.2003. According to the appellants, the deceased was working as a part time Accountant and was studying for Plus Two as a private student. The challenge is against the compensation granted. We find that the Tribunal has granted Rs.2,67,395/- as compensation, out of which Rs.75,595/- is towards medical expenses.

2. The learned counsel for the appellants submits that during the period of treatment, his leg was amputated. But even then, he did

not survive.

3. We heard the learned counsel for the Insurance Company also.

4. The main argument is regarding the income assessed by the Tribunal which is at ₹1500/- alone. It is submitted by the learned counsel for the appellants that the deceased was working as a part time Accountant. But we find that there is no evidence in support of the same. What is claimed as monthly income is ₹3,000/-. We adopt ₹2,500/- as the monthly income. The multiplier adopted by the Tribunal is 14, whereas going by the judgment in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**, it will be 18. 50% of the income will have to be deducted towards personal expenses and therefore the compensation towards loss of dependency will be ₹2,70,000/- (2500 x 12 x 18 x 50%).

5. The Tribunal has granted ₹1500/- towards transportation, ₹75,595/- towards medical expenses, ₹800/- towards bystander expenses @ ₹100/- per day and ₹7,500/- for pain and suffering, ₹3,000/- for funeral expenses, ₹1,000/- as miscellaneous incidental

expenses including loss of clothing, ₹5,000/- each to the appellants as compensation for loss of love and affection.

6. In the light of the fact that the deceased was treated as inpatient upto 8.5.2003, we grant an amount of ₹40,000/- towards pain and suffering. The funeral expenses granted is also too low. In the light of the judgment of the Apex Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC),** ₹ 25,000/- is granted towards funeral expenses and ₹1,00,000/- is granted towards loss of love and affection. For bystander expenses, we grant @ ₹150/- which will come to ₹1,200/- (8 x 150). Therefore, the total compensation will be as follows :

Head of claim	***Amount Awarded in rupees***
Medical expenses	75595
Transportation	1500
Dependency	270000
Pain and suffering	40000
Funeral expenses	25000
Loss of love and affection	100000
Bystander's expenses	1200
Miscellaneous incidental expense	1000

Head of claim	***Amount Awarded in rupees***
Total	514295 Rounded off to 5,14,300/- (Rupees five lakhs fourteen thousand three hundred only)

7. The appellants will be entitled to interest @ 9% per annum for the enhanced compensation. It is submitted by the learned counsel for the appellants that the Tribunal has not granted cost of ₹10,000/-. We allow the cost incurred by the appellants to the above extent before the Tribunal. The parties will suffer their costs in the appeal.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

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