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 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

MACA.No. 2165 of 2014 ()

AGAINST THE AWARD IN OPMV 1210/2008 of ADDL.D.C.& MACT,PATHANAMTHITTA
APPELLANT(S)/PETITIONERS 1 T0 5:

1. REHAMATH BEEVI
W/O. LATE MUHAMMED SHAFI, SHAJI MANZIL, T.B.JUNCTION
PUNALUR, NOW RESIDING AT ALANKARATHU HOUSE
PATHANAMTHITTA.

2. ANZEL SHAFI (MINOR)
S/O. LATE MUHAMMED SHAFI
REPRESENTED BY HIS MOTHER REHAMATH BEEVI
SHAJI MANZIL, T.B.JUNCTION, PUNALUR
NOW RESIDING AT ALANKARATHU HOUSE, PATHANAMTHITTA.

3. FAISAL SHAFI (MINOR)
S/O. LATE MUHAMMED SHAFI
REPRESENTED BY HIS MOTHER REHAMATH BEEVI
SHAJI MANZIL, T.B.JUNCTION, PUNALUR
NOW RESIDING AT ALANKARATHU HOUSE, PATHANAMTHITTA.

4. MYTHEEN KUNJU
S/O. HYDROSE, SHAJI MANZIL, T.B.JUNCTION
PUNALUR, NOW RESIDING AT ALANKARATHU HOUSE
PATHANAMTHITTA.

5. SAINA BEEVI
W/O. MYTHEEN KUNJU, SHAJI MANZIL, T.B.JUNCTION
PUNALUR, NOW RESIDING AT ALANKARATHU HOUSE
PATHANAMTHITTA.

BY ADVS.SRI.T.K.KOSHY
SRI.N.BABU VARGHESE
SRI.ABE RAJAN

RESPONDENT(S)/RESPONDENTS 1 TO 3:

1. ULAGANATHAN
2, INDIRA GANDHI NAGAR, MADAMBAKKAM
GUDUVANCHERRY, CHENGALPET TALUK, KUNJIPURAM DISTRICT
TAMIL NADU STATE, PIN-

2. D.KUPPUSELVAM
A.M.ROAD, MUKOKCHUNG P.O., NAGALAND STATE
PIN-

3. THE DIVISIONAL MANAGER

NATIONAL INSURANCE COMPANY LIMITED, NELSON COMPLEX
KAYAMKULAM, PIN-690503.

R3 BY ADV. SHRI ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 21-01-2015, ALONG WITH MACA 51/2015,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.

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M.A.C.A.Nos.2165/2014 and 51/2015

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Dated this the 21st day of January, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals are respectively from the award in O.P.(MV) No.1210/2008 on the file of the Motor Accidents Claims Tribunal, Pathanamthitta. The appellants in M.A.C.A. No.2165/2014 are the claimants and in the other appeal the insurance company has come up in appeal. In both these appeals the quantum awarded is under challenge. As far as the claimants' appeal is concerned, the appellants are the wife, two minor children and the aged parents of the deceased. The deceased, Shri Mohammed Shafi was proceeding in a motor cycle bearing registration No.KL-2) 8675 on 4.7.2008 at about 8.30 p.m. Through Kollam - Thirumangalam public road and he was hit down by a tanker lorry bearing Reg. No.NL-02D-1777. He died on the same day.

2. Before the Tribunal, a total amount of Rs.30 Lakhs was claimed as compensation and the Tribunal awarded a sum of Rs.14,18,500/- under various heads.

3. In support of the claim, the claimants have averred that the deceased was working as a heavy vehicle driver in UAE at the relevant time. He was getting 3485 Dhirhams, equivalent to Indian currency of Rupees thirty thousand. In support of the employment of the deceased, the claimants have produced Ext.A9 driving licence particulars issued from Sub R.T.O., Punalur, Ext.A10 salary details of the deceased, Ext.A11 driving licence issued from United Arab Emirates and Ext.A12 passport of the claimant. The Tribunal has assessed the monthly income on a notional basis at Rs.5,000/-. Fifty percent has been added towards future prospects in the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 - SC) and then the monthly income was fixed at Rs.7,500/- and after deducting 1/4th for personal expenses and by applying the multiplier as 15, the loss of dependency has been calculated at Rs.10,22,500/-.

4. As far as the calculation of multiplicand is concerned, learned

counsel for the insurance company submitted that there is no justification for adding 50% for future prospects since the employment in UAE cannot be said to be a regular one and at any time the same may be terminated and he had to come back.

5. While replying to the said argument, learned counsel for the claimants submitted that only a sum of Rs.5,000/- p.m.has been adopted by the Tribunal which is too low by any stretch of imagination. Concrete evidence is there to show that he was having a heavy duty driving licence issued by UAE and the salary details and passport details will support the plea of the appellants. He also relied upon additional documents produced in appeal, viz. The statements with regard to the S.B. Account maintained by the first appellant/wife in South Indian Bank, Piravanthur, Kollam.

6. The question is whether the amount claimed as monthly income by the appellants could be easily accepted. As far as the income of the deceased is concerned, even if conversion amount of Dhirham may reflect the remuneration he was receiving in UAE, there are certain other factors which will come into the picture. Whether he

was having a paid accommodation, amounts being spent by him for food and other personal needs, medicine, etc. and other expenditure including travel, should go to the assessment of monthly contribution as far as the dependants are concerned. Regarding these, there is no evidence in this case. Therefore, we will not be justified in accepting the amount claimed as such by the appellants. But at the same time, the amount arrived at by the Tribunal at Rs.5,000/- is also too low. The Apex Court in the decision reported in **Minu Rout and another v. Satya Pradyumna Mohapatra and others** {(2013) 10 SCC 695 = 2013 KHC 4701}, has adopted Rs.6,000/- per month as earnings of a driver who was aged 35 at the time of accident and the accident in that case occurred on 8.11.2014. In that case Rs.5,000/- was claimed by the claimants as monthly wages. The Apex Court was of the view that "the Tribunal ought to have taken the salary of the deceased driver at Rs.6,000/- by taking judicial notice of the fact that the post of a driver is a skilled job. Though the claim of the appellants is Rs.5,000/- as monthly salary of the deceased for the purpose of determining the loss of dependency, the actual entitlement of the salary of the deceased should have been taken at Rs.6,000/- per month by the Tribunal for awarding just and reasonable compensation, which is the statutory duty of the Tribunal and the Appellate Court." Since the Apex Court adopted the wages at Rs.6,000/- in the year 2004, we will be justified in adopting the monthly income of the deceased at Rs.10,000/- representing the contribution to the dependants by way of remittance from UAE. Therefore, the dependency compensation will be Rs.13,50,000/-.

7. The Tribunal has awarded Rs.25,000/- towards funeral expenses which is justifiable. Serious objection is raised by the learned counsel for the insurance company Shri Ziyad Rahman with regard to the grant of amount towards loss of love and affection, viz. Rs.2,50,000/- and loss of consortium (Rs.1 Lakh). It is pointed out that the claimants have claimed only Rs.50,000/- and Rs.47,000/- under these heads. We are of the view that in the light of the various decisions of the Apex Court, viz. **Nagappa v. Gurudayal Singh** (2003 (1) KLT 115 - SC) as well as **Minu Rout's case** {(2013) 10 SCC 695}, the Tribunal and the court will have to fix a fair and just

compensation. If that be so, even if the claimants have claimed only at Rs.50,000/- and Rs.47,000/-, in the light of the view taken in **Nagappa's case** (2003 (1) KLT 115 - SC) as there is no restriction for the Tribunal or court to award amounts more than what is claimed, we do not find any infirmity in the award of the Tribunal.

8. For loss of estate, a sum of Rs.10,000/- has been granted by the Tribunal, which according to the claimants, is inadequate, going by the various decisions of the Apex Court. Since the deceased was in Gulf countries, we award a sum of Rs.50,000/- as compensation towards loss of estate. Of course, as far as loss of love and affection is concerned, two minor children and the aged parents are there. We find from the award that a sum of Rs.2 Lakhs has been awarded to the two minor children and Rs.50,000/- has been awarded to the parents and there is no reason to interfere with the same. Accordingly the total compensation will be as follows:

Head of claim	***Amount awarded by the Tribunal (Rs)***	***Modified award passed by this Court (Rs)***
Loss of dependency	1022500	1350000
Transport to hospital	5000	5000

Head of claim	*Amount awarded by the Tribunal (Rs)*	*Modified award passed by this Court (Rs)*
Damage to cloths	1000	1000
Funeral expenses	25000	25000
Pain and suffering	5000	5000
Loss of love and affection	2500000	250000
Loss of consortium	100000	100000
Loss of estate	10000	50000
Total	1418500	1786000

(Rupees Seventeen lakhs eighty-six thousand only)

Accordingly, MACA No.2165/2014 is allowed and the appellants are entitled to get a total compensation of Rs.17,86,000/- with interest at 9% as granted by the Tribunal and the proportionate costs allowed by the Tribunal. The insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months.

MACA No.51/2015 is dismissed. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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