IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

MACA.No. 2210 of 2014 ()

AGAINST THE AWARD IN OPMV 40/2013 of M.A.C.T.,KOZHIKODE DATED 10.02.2014

APPELLANT(S)/3RD RESPONDENT:

RELIANCE GENERAL INSURANCE CO.LTD.
KOZHIKODE, REPRESENTED BY ITS DEPUTY MANAGER
REGIONAL OFFICE, ERNAKULAM.

BY ADVS.SRI.GEORGE CHERIAN (SR.)
SMT.K.S.SANTHI
SMT.LATHA SUSAN CHERIAN

RESPONDENT(S)/CLAIMANTS:

1. RAMSEENA
W/O. (LATE) RAHMATHALI
RESIDING AT 404(3/299), KARUTHEDATH, THOTTATHILKADAVU
MUKKOM, KOZHIKODE. PIN-673001.

2. SUBAIDA,
W/O. ABDURAHIMAN, RESIDING AT 166
PULIYAPRAM THADATHIL, P.O. MAVOOR, PARAMMAL
KOZHIKODE-673661.

3. MUHAMMED ASLAM,
S/O. ABDURAHIMAN, RESIDING AT 166
PULIYAPRAM THADATHIL, P.O. MAVOOR, PARAMMAL
KOZHIKODE-673661.

4. MUHAMMED ASHRAF.K.G.
S/O. UNNIKAMU, RESIDING AT KALLIVALAPPIL HOUSE
P.O. CHERUVADI, MAVOOR(VIA) KOZHIKODE. PIN-673661.

5. AKKU@ AKBERSHAN MAJEED,
S/O. MAJEED, RESIDING AT MECHERI THAZHE HOUSE
ALUMKANDI P.O., KEEZHUPARAMBA, MALAPPURAM-676505.

R2-R3 BY ADV. SRI.V.S.CHANDRASEKHARAN
R2-R3 BY ADV. SRI.M.V.DAS
R2-R3 BY ADV. SMT.LEKSHMI SWAMINATHAN
R4 BY ADV. SRI.JACOB ABRAHAM

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 26-10-2015, ALONG WITH MACA. 612/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.
~~~~~~~~~~~~~~~~~~~~~~~~~~~~
M.A.C.A. Nos. 2210 of 2014
and 612 of 2015
~~~~~~~~~~~~~~~~~~~~~~~~~~~~
Dated, this the 26th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

These two appeals arise from the very same Award passed by the M.A.C.T. Kozhikkode in O.P.(M.V.) No. 40 of 2013, whereby a total compensation of Rs.19,75,000/- has been awarded by the Tribunal in respect of the death of a Forest Guard in a road traffic accident occurred on 23.09.2012.

2. M.A.C.A. No. 2210 of 2014 has been preferred by the Insurance Company while the other appeal has been preferred by the claimants. The factual position, as disclosed from the materials on record, is that while the deceased was proceeding on a motorcycle on 23.09.2012 he was knocked down by a stage carriage owned by the first respondent, driven by the second respondent and insured with the third respondent. This resulted in fatal injuries to the deceased,

who ultimately bid farewell to this world, which was sought to be compensated by filing claim petition before the Tribunal, by his widow, mother and sibling respectively.

3. The third respondent Insurance Company contended that there was no valid and effective driving license for the driver of the stage carriage. The evidence adduced before the Tribunal consists of documents produced from the part of the claimants as Exts. A1 to A8 series and Exts. B1 to B3 marked from the side of the 3rd respondent Insurance Company. After analysing the materials on record, the Tribunal arrived at a finding that the accident was occurred mainly because of the negligence on the part of the 2nd respondent/driver of the bus.

4. According to the claimants, the deceased was aged 26 years at the time of the accident and was working as Forest Guard drawing a monthly salary of Rs.15,938/-, as revealed from Ext. A5. Observing that 10 % of the total income had to be deducted towards the income tax and a sum of Rs.2500/- to be deducted towards the professional tax as per the existing tariff, the multiplicand was fixed as Rs.1,69,628/- . Adopting the multiplier

of '17', based on the age of the deceased, and reducing 1/3rd towards the personal expenses, the compensation towards the loss of dependency was worked out as Rs.19,22,450/-. This according to the Insurer is much on the higher side, as only 1/3rd has been deducted towards the personal expenses. The grievance of the Insurance Company is to the effect that since the first claimant got remarried within a span of six months and since it has been held by the Tribunal that the second claimant mother alone would be the dependent, only 50% of the income ought to have been reckoned as the contribution to the family. This in turn is under challenge in this appeal preferred by the Insurer.

5. In the appeal preferred by the claimants (which in fact has been preferred after issuing notice in the delay petition for filing the other appeal), the grievance is mainly with regard to the inadequacy of the amount awarded under the head of 'funeral expenses' and 'loss of consortium'. According to the claimants, the remarriage of the widow is not a ground to deny loss of consortium to the requisite extent.

6. Heard the learned counsel appearing for the claimants

[appellants in M.A.C.A. No. 612 of 2015], the learned standing counsel appearing for the Insurance Company [appellant in M.A.C.A. No. 2210 of 2014] and also the learned counsel appearing for the owner of the vehicle concerned.

7. The manner in which the multiplicand and multiplier have to be reckoned has been laid down by the Apex Court in the crystal clear terms as per the verdict reported in **2010 (2) KLT 802 (SC) [Sarla Verma Vs. Delhi Transport Corporation].** In the case of the deceased aged below 40 years 50% addition to the salary has to be effected towards the future prospects, whereas in the case of deceased aged between 40 - 50 years, it has to be 30%, while no addition is necessary for the persons aged above 50 yrs. Since there is no dispute as to the fact that the deceased in the instant case was working as Forest Guard in the Government Department with a certified salary of Rs.15,938/-, as revealed from Ext. A5, and since the Tribunal arrived at a clear finding that mother alone is the dependent of the deceased, only 50% of the salary ought to have been reckoned to work out the compensation; instead of deducting 1/3rd. The Tribunal has deducted 10% towards

the Income Tax and Rs.2500/- towards the professional tax. It is true that the income has to be deducted from the gross salary. But we find it difficult to accept the course pursued by the Tribunal in deducting 10% without any regard to the 'standard deductions' as per the Income Tax. That apart, the balance figure for the purpose of taxation has to be worked out after considering the various other relevant aspects, including as to the possible deduction with reference to the payment of LIC premium, if any, payment of interest towards the housing loan, if any, and amounts under such other heads. No evidence has been adduced from the part of the Insurance Company or any of the respondents in this regard. As such, we do not find it necessary to go into such minute aspects, in the absence of specific pleadings and evidence.

8. On reworking the compensation, accepting the proposition mooted by the appellant Insurance Company as to the necessity to have deducted 50% towards personal expenses and applying the principle laid down in **Sarla Verma's** case in respect of future prospects, the actual loss of dependency would come to **Rs.24,48,000/-** [(16000+8000) x 12 x 17 x 50/100]. The

Tribunal has awarded only a sum of Rs.19,22,450/- under this head. As such, the balance payable under this head to make the Award a 'just' one under Section 168 of the M.V. Act, is **Rs.5,25,550/-**. The Tribunal has awarded only a sum of Rs.10,000/- towards the funeral expenses. Accepting the principle laid down by the Apex Court in **Rajesh Vs. Rajbir Singh [2013 (3) KLT 89 (SC)]** and also considering the fact that the accident was occurred in the year 2012, a balance of **Rs. 15,000/-** is payable under this head as well. Similarly, with regard to the loss of love and affection and loss of consortium taken together, this Court finds that a balance sum of **Rs.65,000/**- is to be awarded.

9. In the above circumstances, the appellants in M.A.C.A. No.612 of 2015 will be entitled to get an additional sum to Rs.6,05,550/- rounded to **Rs. 6,06,000/- [Rupees Six lakhs and six thousand only)**. The said amount is required to be satisfied with interest @ 9% p.a from the date of filing the claim petition till satisfaction. The due amount shall be deposited by the Insurance Company within one month from the date of receipt of a copy of this judgment.

10. It is seen that there was a specific contention for the Insurance Company that the bus was being driven by the concerned driver without proper and effective driving license. The position was not contested by the respondents 1 and 2/driver and owner respectively, as they remained ex-parte. It was accordingly that the right of recovery was conferred upon the Insurance Company, on satisfying the liability towards the claimants. This being the position, the recovery right has to be given to the appellant Insurer in M.A.C.A. No. 2210 of 2014 with regard to the enhanced compensation as well. We order it accordingly.

11. The learned counsel appearing for the owner of the vehicle (4th respondent in M.A.C.A. No. 2210 of 2014) submits that the driver was actually having valid driving licence at the time of the accident and that the position could not be brought to the notice of the Tribunal earlier. After passing the Award, it was has been sought to be corrected by filing necessary proceedings before the Tribunal, which however came to be dismissed. It is stated that further proceedings are being pursued in this regard. In the said circumstances, it is made clear that finalization of these

appeals will not bar the way of the owner and driver of the vehicle in pursuing further steps, if they have got a valid and sustainable case, in accordance with law.

Both the appeals stand disposed of.

sd/-
P. R. RAMACHANDRA MENON,
JUDGE

sd/-
ANIL K. NARENDRAN,
JUDGE

kmd

/True copy/

P.A. to Judge