IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

MACA.No. 2056 of 2009 ( )

AGAINST THE AWARD IN OPMV 727/2002 of ADDL.MACT,THALASSERY
DATED 29-09-2008

APPELLANTS/PETITIONERS:
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1. C.M.KUNJALI,
S/O.MAMMED, AGED 62 YEARS, FATHIMA MANZIL
PALOTTUPALLY, MATTANNUR.

2. UPPIKARAMBATH SAREENA,
D/O.MAYAN, AGED 28 YEARS, PALOTTUPALLY
MATTANNUR.

3. MUHAMED MANZIL, S/O.NASAR,
AGED 8 YEARS, REP. BY MOTHER SAREENA, DO. DO.

BY ADVS.SRI.C.P.PEETHAMBARAN
SRI.M.X.ANTONY LIJO

RESPONDENTS:
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1. C.P.MANJUNAD,
S/O.PUTHUSWAMY GOWDA, CHANDRAGALU VILLAGE, K.R.NAGAR
TALUK, MYSORE DISTRICT.

2. K.T.MAHADEVA, S/O.B.C.THOTTAPPA,
AKKAMADEVI ROAD, SASWANJERA BLOCK, K.R.NAGAR
MYSORE, KARNATAKA.

3. THE UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, NO.1822/47, ZABI COMPLEX
BAISAN ROAD, HUNSUR-571 105.

R3 BY ADV. SRI.P.V.JYOTHI PRASAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARED ON 15-01-2015, ALONG WITH MACA. 2057/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

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

M.A.C.A.Nos.2056 & 2057 of 2009

Dated this the 15th day of January, 2015

JUDGMENT

T.R.Ramachandran Nair, J.

These appeals have been filed respectively challenging the common award of the Tribunal in O.P.(MV) No.727/2002 and O.P.(MV) No.1324 of 2002. In both cases the appellants are the claimants.

2. In M.A.C.A.No.2056 of 2009, the appellants are father, wife and child of deceased Nasar. In M.A.C.A.No.2057 of 2009, the appellants are parents and siblings of deceased Mahboob.

3. The accident in these two cases arose on 9.12.2001. Deceased Nasar was riding a motor cycle from Mattannur to Uliyil, when the offending vehicle, a lorry bearing registration No.KA-09/9031 hit against the motor cycle, and he died on the way to the District Hospital, Kannur. Deceased Mahboob who was travelling as a pillion rider also died in the same accident. Accordingly, the claimants have made the two applications for compensation.

4. We will first consider M.A.C.A.No.2056 of 2009. In this case, the quantum of compensation granted is ₹2,94,000/-. The learned counsel for the appellants submitted that the deceased was working as

a cashier in a Hotel. The monthly income claimed was ₹6,000/-. But the Tribunal has adopted only ₹2,000/- as monthly income. The documentary evidence before the Tribunal, Ext.A18, which was proved through PW-2 was there. But it was not accepted by the Tribunal.

5. The learned counsel for the Insurance Company submitted that adequate compensation has been granted. We find from paragraph 11 of the award that PW2, who was examined in support of the claim of employment and salary, was the Manager of Stand View Hotel, Mattannur. The owner of the same was the sister-in-law of PW2. His evidence was that the deceased was a cashier earning ₹6,000/- per month.

6. There was evidence of PW-1 also, wife of the deceased, to the effect that he was an employee in a Hotel. The Tribunal was of the view that the evidence in this respect is not seen to be satisfactory. This view is taken on the finding that the registers of the Hotel have not been produced.

7. Learned counsel for the appellants submits that the oral evidence of PWs1 and 2 supported by Ext.P18 was sufficient to prove the employment and therefore the amount claimed ought have been accepted. The learned counsel for the Insurance Company submitted that the accident is of the year 2001 and therefore the amount claimed

at ₹6,000/- is excessive.

8. As regards the finding of the Tribunal, that nothing has been produced to prove the earnings of the deceased, we disagree with the view of the Tribunal. The Tribunal should have examined it in the light of the available evidences and whether it satisfies the standards to prove the claim. The oral evidence given by PWs1 and 2 is corroborated by Ext.A18. Therefore we are justified in accepting that he was working as a Cashier. It will be reasonable to fix ₹4,000/- as the monthly income of the deceased for the assessment of compensation.

9. The deceased was aged 21, as on the date of the accident. The Tribunal has awarded an amount of ₹2,72,000/- towards loss of dependency. This was arrived at by deducting 1/3rd for personal expenses and by taking multiplier as 17. Going by the judgment in ***Sarala Verma and Others v. Delhi Transport Corporation and Others*** *[2010 (2) KLT 802 (SC)]* (paragraph 14 especially) the multiplier will be 18 for the age group of 21 to 25 and we adopt the same.

10. In the light of the decision of the Apex Court in ***Rajesh Vs. Rajbir Singh*** *[2013 (3) KLT 89 (SC)]*, towards loss of consortium and love and affection, we grant ₹1,00,000/- each, and further we award

₹25,000/- towards funeral expenses. The Tribunal has allotted ₹2,000/- under other eligible grounds. Nothing has been granted towards loss of estate.

11. The Tribunal has fixed the compensation in the following manner:

Head of claim	***Amount awarded in Rupees***
Loss of dependency	272000
Loss of consortium	10000
Loss of love and affection	10000
Other eligible amounts	2000
Total	294000

12. We recompute the compensation in the following manner:

Head of claim	***Amount awarded in Rupees***
Loss of dependency	576000 (4000 x 12 x 18 x 2/3)
Loss of consortium	100000
Loss of love and affection	100000
Pain and suffering	10000
Loss of estate	30000
Other eligible amounts (Transportation to Hospital and damage to both injured)	2000
Funeral expenses	25000
Total	843000

13. 50% of the award amount will be paid to appellant No.2 and out of the remaining 50%, 25% would be awarded to the first

appellant and remaining 25% to the third appellant.

14. As regards M.A.C.A.No.2057 of 2009, the deceased was a bachelor aged 21 years at the time of the accident. The claimants, namely, the parents as well as the siblings, contend that the compensation is inadequate. As rightly pointed out by the learned counsel for the Insurance Company, only the parents alone are entitled for the compensation, since the other claimants, have become major already and they are not dependents of the deceased.

15. The total compensation claimed is ₹20,00,000/- out of which ₹3,52,000/-is granted. It was claimed that the appellant was working in Gulf Countries drawing ₹25,000/- per month. Ext.A8 is the salary certificate of the deceased, wherein it is stated that he is drawing 1,600 Dirhms. The Tribunal has adopted only a notional amount of ₹2,500/- per month.

16. The learned counsel for the appellant submitted that apart from Ext.A8, which is counter signed by the Ajman Chamber of Commerciel & Industry and by the Consulate General of India, Dubai (U.A.E.), health card of the deceased had also been produced and marked as Ext.A9. The passport details also had been produced as Ext.A7.

17. The learned counsel for the Insurance Company relied upon

the judgment of the Apex Court in ***Jiju Kuruvila*** *Vs.* ***Oriental Insurance Co. Ltd.*** *[2013 (3) KLT 261 SC]* contend that the date of filing of the claim petition is the proper date for fixing the rate of exchange at which foreign currency has to be converted into the currency of the country. It is therefore submitted that, if at all this Court accept the plea of the appellants then the conversion rate as in 2002 will have to be taken.

18. It is also submitted that Ext.A8 was rightly not accepted by the Tribunal. We find that Ext.A8 is counter signed by the Consulate General of India also. In the above decision of the Apex Court, in paragraph 28, the employment certificate issued by the Employer of the deceased was part of Ext.A6 which should his annual salary was 30,000 dollars. The same was attested by the Notary Public and counter signed by the Consulate General of India, and was accepted by the Supreme Court. Herein, the Tribunal was of the view that the Employer has not been examined. But since the document is counter signed by the Consulate General of India, we will be justified in accepting the same.

19. The fact that he was employed in Gulf Countries is clear from Exts.A8 and A9. Going by the averments in the application, the conversion amount is shown as ₹25,000/-. Evidence is not there with

regard to the residential accommodation, whether it was free or not and other details, and whether the salary was subjected to any payment of tax etc. A reasonable amount may have to be deducted from the same for all these expenses. We will be justified in taking ₹10,000 as the monthly contribution which he would have contributed to the family. The multiplier to be adopted is 18. Since he was a bachelor 50% will be deducted for personal expenses also. Therefore, the claimants will be entitled for contribution @ ₹5,000/- per month. For funeral expenses, we grant ₹25,000/- and for loss of love and affection we grant an amount of ₹1,00,000/- and towards pain and suffering we grant ₹10,000/-.

20. The Tribunal has fixed the compensation in the following manner:

Head of claim	***Amount awarded in Rupees***
Loss of dependency	340000
Loss of love and affection	10000
Other eligible amounts	2000
Total	352000

21. We recompute the compensation in the following manner:

Head of claim	***Amount awarded in Rupees***
Loss of dependency	1080000 (₹5000 X 12 X 18)
Loss of love and affection	100000

Head of claim	***Amount awarded in Rupees***
Funeral expenses	25000
Pain and suffering	10000
Total	1215000 (Rupees Twelve lakhs fifteen thousand only)

22. The above amount will be shared by appellants 1 and 2 equally.

Appeals are allowed to the above instant and the claimants will be entitled for interest @ 9% per annum in the light of the judgment of the Supreme Court in ***Supeidi (Smt) and others*** *v.* ***National Insurance Company Ltd. and another*** *(2009 (4) SCC 513).* The Insurance Company shall deposit the amount less the amount already deposited before the Tribunal within a period of three months from the date of receipt of a copy of this judgment. No costs.

Sd/-

T.R.RAMACHANDRAN NAIR, JUDGE

Sd/-

P.V.ASHA, JUDGE

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