IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

MACA.No. 1110 of 2008 ( )

AGAINST THE AWARD IN OP(MV) 1542/2002 OF PRINCIPAL MOTOR ACCIDENTS CLAIMS TRIBUNAL,KOZHIKODE DATED 07-07-2007

APPELLANTS/CLAIMANTS:
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1. VEERANKUTTY, AGED 60 YEARS,
   S/O SAIDALI

2. KUNHEEBI, AGED 55 YEARS,
   W/O VEERANKUTTY

3. SHAMEENA, AGED 22 YEARS,
   W/O MUJEEB

ALL RESIDING AT ZEENAT MANZIL
THARAYIL THAZHAM PARAMBA, POOLAKADAVU, NALLALAM POST
KOZHIKODE-27.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS/RESPONDENTS:
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1. BASJITH, S/O MUHAMED [DIED]
   PARAPALLY HOUSE, LANKA PARAMBA, NALLALAM POST
   KOZHIKODE.

2. THE NATIONAL INSURANCE CO. LTD.,
   CALICUT DO-II, P.B.NO.811, NOOR COMPLEX
   MAVOOR ROAD, NEAR ARAYIDATH PALAM, KOZHIKODE.

*ADDITIONAL R3 TO R10 IMPLEADED:

R3. AMINA, AGED 71 YEARS, W/O. LATE MUHAMMAD

R4. SHAMSU, AGED 54 YEARS, S/O. LATE MUHAMMAD

R5. SUBAIDA, AGED 52 YEARS, D/O. LATE MUHAMMAD

R6. RAZAK, AGED 50 YEARS, S/O. LATE MUHAMMAD

R7. AYUB, AGED 47 YEARS, S/O. LATE MUHAMMAD

R8. RAZIYA, AGED 45 YEARS, D/O. LATE MUHAMMAD

R9. FIROZABI, AGED 36 YEARS, D/O. LATE MUHAMMAD

R10. RUBINA, AGED 32 YEARS, D/O. LATE MUHAMMAD

ALL ARE RESIDING AT PARAPALLY HOUSE, LANKA PARAMBA, NALLALAM POST, KOZHIKODE ARE IMPLEADED AS ADDITIONAL R3 TO ADDL.R10 VIDE ORDER DATED 28.1.2015 IN I.A.NO.1443/2010 IN MACA 1110/2008.

R2 BY ADV. SRI.E.M.JOSEPH
ADDL.R3,5,6,8-10 BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

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M.A.C.A.No.1110 of 2008

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Dated this the 10th day of July, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred by the claimants in O.P.(M.V.) No.1542/2002 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode. The challenge is on two counts; (1) against absolving the Insurance Company from the liability and (2) the quantum of compensation awarded.

2. The facts in a nut shell is that a motor vehicle accident occurred on 17.4.2002 in which Mujeeb Rahman who was a pillion rider on a motorcycle sustained fatal injuries and succumbed to the injuries. The parents and the wife of the deceased are the claimants. Alleging negligence on the side of the rider of the bike, a compensation claim was moved before the Tribunal for a total sum of Rs.8 lakhs. In the claim petition the claimants arrayed the rider/owner of the bike as respondent No.1 and the Insurance Company as respondent No.2. The Tribunal awarded a total

compensation of Rs.2,36,000/-. It was found that the deceased was a pillion rider and the policy in question was only an act only policy. As no additional premium was paid, the Insurance Company was absolved and owner cum rider was made liable. Against the said finding, this appeal preferred.

3. When the appeal came up for hearing, learned counsel for the appellants submitted before us that the pillion rider can be either treated as a third party or the policy can be treated as a package policy which will cover the pillion rider. It is also the submission that the deceased was aged only 27 years and it is the further submission that the deceased was a driver at that point of time who was earning more than Rs.5,000/- per month. It is also the submission that the appellant 1 & 2 are the parents of the deceased who were solely depending upon the deceased. It is also the submission that the third appellant is the widow of the deceased who was very young. The compensation awarded on the heads of dependency and on various other

heads like funeral expenses, loss of consortium and pain and suffering are all insufficient and inadequate. It is also the submission that no compensation has been given on the head of loss of love and affection. Thus a total re-fixation of compensation is warranted.

4. The learned counsel for the first respondent submitted before us that the Tribunal not considered the fact that there was insurance coverage for the vehicle. It is also the submission that considering the circular of IRDA, the insurance policy should have been treated as a package policy.

5. The learned counsel for the Insurance Company submitted before us that this is a case where the policy is marked as Ext.B1. From the body of the award, it can be seen that the document is marked as Ext.B1. But surely not seen indexed to the award. It is only an omission. It is the further submission that it is specifically printed on Ext.B1 that it is an act policy. The Tribunal considered the fact that no additional premium is seen paid and evaluating the

materials before the Tribunal, the Insurance Company was absolved. Since the Insurance Company is not legally liable, no interference in this regard is warranted.

6. Heard, points to be considered are the liability of the Insurance Company and the quantum of compensation.

7. The liability of the Insurance Company:

In this case Ext.B1 is the insurance policy. We perused the copy of policy which shows that it is an act policy alone. In the light of the dictum laid down by the decision of the Apex Court in **National Insurance Co. Ltd. v. Balakrishnan & Anr [AIR 2013 SC 473]** it can be seen that a pillion rider will be covered only in a case of a package/comprehensive policy. But at the very same time it is evident and clear that an act policy will not cover the liability of a pillion rider. Thus what comes out is that when policy in question is only an act policy, it will not cover the liability of the pillion rider. The corollary is that no interference is warranted in the finding of the Tribunal in this regard.

8. The quantum of compensation:

The deceased was a driver by profession. The accident occurred in 2002. The deceased was aged 27 years and hence the multiplier will be 17 as per the decision of the Apex Court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**. While calculating compensation towards dependency 1/3rd of the income will have to be deducted for personal expenses of the deceased.

9. There are three claimants. Considering the period of accident and occupation of the deceased an income of Rs.4,000/- is considered as his monthly income for the purpose of calculation of compensation. Considering the fact that the third appellant was only aged 22 years at the time of death of Mujeeb Rahman, and as no amount is seen awarded towards loss of love and affection, a sum of Rs.1 lakh granted on this count. On other heads also a re-fixation is seen warranted.

10. Accordingly, we re-fix the compensation in the following manner:

Head of claim	Amount re-fixed in Rs.
Transportation	2000
Funeral expenses	15000
Pain and suffering	10000
Medical expenses	2000
Loss of consortium	100000
Loss of love and affection	100000
Loss of estate	30000
Loss of dependency	4000x12x17x2/3 544000
Total	**8,03,000** **(Rupees eight lakhs three thousand only)**

Since the claim is only for Rs.8 lakhs, the total compensation is limited to Rs.8,00,000/- (Rupees eight lakhs only).

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation. Out of the enhanced compensation, Rs.50,000/- with interest shall be shared equally in between appellant No.1 and 2, who are the parents. The balance amount with interest shall be entitled to the third appellant, who is the widow of the deceased.

The enhanced compensation will bear 9% interest from the date of petition. The appellant will be entitled to realise the compensation from additional respondent Nos.3 to 10 impleaded in the appeal to the extent the property they inherited from the deceased Basjith, S/o Muhamed.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/