IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

MACA.No. 1316 of 2008 ( )

AGAINST THE AWARD IN OPMV 88/2003 of D.C. & SESIONS & MACT,KALPETTA DATED 11-01-2007

APPELLANTS/PETITIONERS:
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1. SAJIRA, W/O. LATE KABEER,
AGED 25 YEARS, ALUNGAL VEEDU, ONIVAYAL
KALPETTA POST, VYTHIRI TALUK, WAYANAD DISTRICT.

2. MEHROOB, S/O. LATE KABEER (MINOR),
AGED 7 1/2 YEARS, REP. BY NEXT FRIEND AND
GUARDIAN MOTHER 1ST APPELLANT)

3. MUHAMMED, S/O. POCKER, AGED 72 YEARS,
ALUNGAL VEEDU, ONIVAYAL, POST KALPETTA
VYTHIRI TALUK, WAYANAD.

4. ITHEERU, W/O. MUHAMMED,
AGED 70 YEARS, -DO- -DO-

BY ADV. SMT.CELINE JOSEPH

RESPONDENT(S)/RESPONDENT NO.3:

THE BRANCH MANAGER,
UNITED INDIA INSURANCE CO. LTD., BRANCH OFFICE
RAWTHER BUILDING, NEAR PINANGODE JUNCTION, MAIN ROAD
KALPETTA, WAYANAD.

BY ADV. SRI.RAJESH THOMAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.

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M.A.C.A.No.1316 OF 2008

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Dated this the 31st August, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Insufficiency of compensation awarded by the Tribunal in respect of the death of a youth aged 23 years is sought to be challenged by the claimants, who are the appellants before this Court. The first appellant is the widow, the second appellant is the minor son and appellants 3 and 4 are the parents of the deceased.

2. The accident occurred on 06.02.2003 when the deceased was travelling as a passenger in an autorickshaw bearing No. KL.12/A.8449 at about 4.30 p.m. The autorickshaw overturned because of rash and negligent driving of the vehicle by the first respondent/driver causing fatal injuries to the passenger who succumbed to the injuries on the same date. This led to the claim petition before the Tribunal. Respondents 1 and 2 (in OP (MV), who are the driver and owner of the vehicle filed separate written statements disputing the allegation of rash and negligent

driving , attributed on the driver of the vehicle. The third respondent [in O.P(MV)]/Insurer also filed separate written statement raising various grounds.

3. After completion of the trial, considering the evidence adduced, both oral as well as documentary from the part of the claimants , a total sum of Rs. 299600/- was awarded by the Tribunal, observing that the vehicle was having valid insurance coverage. The said compensation was ordered to be paid with interest at the rate of 6% per annum by the Insurance Company. The appellants seek for further enhancement.

4. The owner and driver of the vehicle are not impleaded in the party array. Since the policy is admitted, we do not find it necessary to cause the appellants to implead them in the party array, nor does it require to be proceeded after affording an opportunity of hearing to them.

5. The learned Counsel for the appellants submits that the deceased was a 'fish merchant' and was earning about Rs.9000/- per month. As rightly observed by the Tribunal, no document was produced to prove the monthly income, under

which circumstance, it was fixed as Rs.2100/-. Adopting the multiplier as '17' (considering the age of the deceased as 23 years) the loss of dependency was worked out, after deducting 1/3rd towards probable personal expenses, thus granting a sum of Rs. 285600/-. Towards tranportation to hospital, a sum of Rs.1000/-, for funeral expenses Rs.3000/- and towards loss of consortium, a sum of Rs.10000/- were also granted by the Tribunal, thus making the total compensation payable, as Rs.299600/-. The learned Counsel submits that evidence was adduced by examining P.Ws. 1 to 3 as to the nature of business which was being pursued by the deceased. Reference is also made to Ext. A6 as well, which is a copy of the licence issued by the concerned Local authority, as to the fish vending business. The learned Counsel also seeks to place reliance on the decision of the Apex Court in ***Syed Sadiq and others vs. Divisional Manager, United India Insurance Company Ltd.*** [(2014) 2 SCC 735] so as to have the income fixed at a higher level.

6. It is true that the accident involved in the case, cited supra was on 14.02.2008, whereas the accident in the instant

case was on 06.02.2003. As such, fixation of the multiplicand could vary, because of the relevant facts and circumstances. However, the fact that deceased, though aged 23 years, was virtually maintaining a family consisting of his wife and minor son, apart from the aged parents, by itself is a pointer to the fact that the deceased was having adequate income to maintain them all, despite his relatively lower age. Viewed in the said perspective, and also in the light of the licence issued by the local authority enabling the party to do fish vending business, we find it fit and proper to reckon Rs.4000/- as the monthly income. Relying on various other parameters to be followed, as laid down by the Apex Court and also considering the number of members in the family belonging to the deceased, we find it fit and proper to effect deduction only to the extent of '1/4th' (instead of 1/3rd ordered by the Tribunal). The multiplier adopted by the Tribunal as '17' appears to be correct and it does not require any variation, in view of the figures given in the 2nd Schedule. On re-working the compensation towards loss of dependency as above, the amount payable is Rs.6,12,000/-

(4000 x 12 x ¾ x 17). After giving credit to the sum of Rs.285600/- awarded by the Tribunal;, the balance payable under this head comes to **Rs.3,26,400/-.**

7. Only a sum of Rs.10000/- has been awarded towards loss of consortium by the Tribunal. The learned Counsel for the appellants submits that the said amount is abysmally on the lower side; more so in view of the law declared by the Apex Court as per the decision reported in **2013 (3) KLT 89** ***(Rajesh vs. Rajbir Singh),*** wherein a sum of Rs. One lakh each has been awarded towards loss of consortium and loss of love and affection; adding that no amount has been awarded for loss of love and affection in the instant case. It is to be noted that the accident occurred in the case considered by the Apex Court was in the year 2007; whereas the accident involved herein was much ago, in the year 2003. The quantum of compensation could vary depending upon the various factors involved with reference to the date of accident. However, some modification is necessary in the instant case as well, so as to facilitate payment of reasonable compensation, as the very mandate of

Sec.168 of the M.V. Act is payment of 'just' compensation. Accordingly, we grant Rs.50000/- towards 'loss of consortium' in so far as the first appellant is concerned and after giving credit to the amount of Rs.10000/- already awarded by the Tribunal, the balance is **Rs.40000**/-. In respect of loss of 'love and affection' for the other appellants, we find it fit and proper to grant a sum of **Rs.50000**/- as adequate compensation. We award the same under this head. The amount of Rs.3000/- towards funeral expenses is quite inadequate and we enhance the same to Rs.10000/-, thus resulting a balance payment of **Rs.7000/**-. The total balance compensation in respect of the death of the deceased comes to **Rs.4,23,400/-** (Rupees four lakhs twenty three thousand and four hundred only).

8. It is seen that the Tribunal had awarded interest at the rate of 6% per annum in respect of the compensation payable, which ought to have been @ 7.5%. As per the relevant verdicts passed by the Apex Court and this Court at different points of time, interest has come to be varied, considering the money value and fixing the same @ 9%. Since the appeal preferred by

the appellants was not within time, the delay involved was sought to be condoned by filing C.M.Application No.1289 of 2008, which was condoned as per order dated 03.07.2008. To strike a balance, we find it fit and proper to award interest at the rate of **8%** per annum from the date of filing of the claim petition in respect of the entire compensation payable, i.e. in respect of the amount awarded by the Tribunal and in respect of the amount enhanced by this Court. The due amount shall be worked out and the same shall be paid by the Insurance company. Since the policy is admitted, we direct the respondent/Insurance company to effect the deposit within one month from the date of receipt of a copy of the judgment.

Appeal stands disposed of.

P.R. RAMACHANDRA MENON,
JUDGE

K. HARILAL,
JUDGE

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