IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

MACA.No. 2680 of 2010

AGAINST THE AWARD IN OPMV 227/2003 of MACT ALAPPUZHA DATED 08-03-2010

APPELLANT(S)/PETITIONERS:
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1. RAJAPPAN, AGED 63 YEARS,
S/O.RAMANKUTTY, DEVASAMCHIRA HOUSE, KALAVOOR P.O.
M.S.P.WARD VI, ALAPPUZHA.

2. RAJAMMA, AGED 57 YEARS,
W/O.RAJAPPAN, DEVASAMCHIRA HOUSE, KALAVOOR P.O.
M.S.P.WARD VI, ALAPPUZHA.

BY ADVS.SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA

RESPONDENT(S)/RESPONDENTS:
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1. K.V.SEBASTIAN, S/O.VARGHESE K.D.,
KIDANGUEL HOUSE, KOOVAPADY (P), WARD-14
KUNNATHUNADU(T), ERNAKULAM.

2. K.V.THOMAS, S/O.KUNJU VAREED,
KANNAPPALLY HOUSE, MATTOOR, KALADY PANCHAYATH,
WARD-12, KALADY.

3. UNITED INDIA INSURANCE CO. LTD.,
REP. BY ITS BRANCH MANAGER, CULLAN ROAD, ALAPPUZHA
POLICY NO.101103/31/021/11/03741/2001
AND CERTIFICATE NO.680181, POLICY ISSUED FROM
PERUMBAVOOR BRANCH.

ADDITIONAL RESPONDENTS:

4.THIRUMALA RAO,
S/O.M.SREENIVASA SHENAI, SREYAM HOUSE,
(VELIMPARAMBU) THIRUMALA BHAGOM, THURAVOOR P.O.,
CHERTHALA TALUK, ALAPPUZHA DISTRICT-588 532,
(OWNER-CUM-RIDER OF KINETIC HONDA SCHOOTER BEARING
REG.NO.KL-04/A-305).

5. THE ORIENTAL INSURANCE CO. LTD.,
REP. BY ITS BRANCH MANAGER, CULLEN ROAD,
ALAPPUZHA-688 001,
(POLICY ISSUED FROM KOCHIN BRANCH, POLICY NO.
440102/2002 VALID FROM 20/12/2001 TO 19/12/2002)
(INSURER OF KINETIC HONDA SCOOTER NO. KL-04/A-30

6. V.S.JAGADEESH, VELIYIL THEYIL HOUSE,
KALAVOOR P.O., ALAPPUZHA-688 522.

7. INDRAJITH P., S/O.PURUSHOTHAMAN,
CHELAMTHARA HOUSE, KALAVOOR P.O., M.S.P.WARD VI
ALAPPUZHA-688 522.

8. UNITED INDIA INSURANCE CO. LTD.,
REP. BY ITS DIVISIONAL MANAGER, DIVISIONAL OFFICE
MULLAKKAL, ALAPPUZHA-688 522 (POLICY ISSUED FROM
ALAPPUZHA BRANCH,
POLICY NO.101500/31/010/16, 33187/2001
VALID, FROM 26/10/2001 TO 25/10/2002,
PACKAGE COMPREHENSIVE 'B' POLICY)
(INSURER OF MOOR CYCLE BEARING
REG. NO.KL-04/D8449).

R-5 BY ADV. SRI.VPK.PANICKER
R3,8 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A. No.2680 of 2010

Dated this the 6th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in respect of the death of a youth of 26 years is sought to be challenged by the parents/ claimants by way of this appeal.

2. On the fateful day i.e., on 17/2/2002, the deceased was travelling as a pillion rider on the motorcycle bearing Registration No.KL-04/B-8449 and by about 3.45 p.m. a lorry bearing Registration No.KCE-6325 which was coming from the opposite side dashed against the motorcycle causing fatal injuries leading to the death of the deceased. This

was sought to be compensated by filing the claim petition, preferred against the parties of both the vehicles. The said Claim Petition numbered as O.P.No.227/03 was tried along with O.P.No.245/03 preferred by the claimant in the connected case and a common verdict was passed on 8/3/2010. The evidence adduced before the Tribunal consists of the deposition given by P.W.1, who happens to be the claimant in O.P.No.245/03. The documentary evidence consists of Exts.A1 to A16 and Ext.B1 - which is a copy of the award in O.P.No.1050/02. On culmination of the trial, the Tribunal fixed the negligence in the ratio of 75:25 between the driver of the lorry and the rider of the motorcycle and sought to proceed with further steps for granting the compensation accordingly.

3. The claim of the appellants before the Tribunal was that the deceased was actually working in a coir factory with a monthly income of ₹6,000/-. A certificate stated as issued by the concerned employer was

produced as Ext.A8 in this regard; but the same was not sought to be substantiated by producing any other material in spite of the fact that the appellants could have caused to production of the wage register, contribution to the Coir Workers Welfare fund or such other evidence. Nobody was sought to be examined in this regard as well. It was in the said circumstance, that the Tribunal chose to reckon the notional monthly income as ₹2,000/- and after deducting 1/3rd towards personal expenses, awarded an amount of ₹1,60,000/-, adopting the multiplier of '10' based on the average age of the claimants. Awarding a further sum of ₹15,000/- towards loss of love and affection and ₹10,000/- towards pain and suffering and ₹2,000/- towards ambulance charges and a sum of ₹3,000/- towards funeral expenses, the Tribunal granted a total compensation of ₹1,90,000/- which was directed to be satisfied with interest at the rate of 7.5% p.a. from the date of the petition by the Insurance Companies of both the vehicles in the proportion of 75:25 (based on negligence already fixed and this in turn is sought to be enhanced by filing this appeal).

4. Heard the learned counsel for the appellants as well as the learned counsel appearing for the Insurance Company.

5. After hearing both the sides and after considering the materials on record, we find it appropriate to raise the notional income by 50% so as to make it ₹3,000/- and to work out the compensation accordingly. Similarly, the multiplier adopted by the Tribunal as '10' is much on the lower side in view of the law declared by the Apex Court in Sarla Verma v. Delhi Transport Corporation [2010 (2) KLT 802 (**SC)]** which was affirmed by the three Bench decision of the Supreme Court in Reshma Kumari v. Madan Mohan [2013 (2) KLT 304 (SC)]. On re-working the compensation adopted by the multiplier '17' in such circumstance, it comes to 3000 x 12 x 17 x 2/3 =

₹4,08,000/-. After giving credit to the sum of ₹1,60,000/- awarded by the Tribunal, the balance payable comes to ₹2,48,000/-.

6. We find that the amount awarded by the Tribunal towards the loss of love and affection requires to be enhanced and we award a further sum of ₹35,000/- under this head so as to make it a total of ₹50,000/-. We award an additional amount of ₹7,000/- in respect of funeral expenses as well. Thus, the total balance compensation payable comes to ₹2,90,000/- (Rupees Two lakhs and ninety thousand only). This shall be satisfied with interest at the rate of 9% per annum from the date of petition i.e., 25/4/03 till satisfaction by the 3rd and 8th respondents/Insurance Companies (same company in respect of both the vehicles, though the policies have been issued from different Branches). Since the policy is admitted, the said amount shall be satisfied with

interest at the rate of 9% per annum within a period of one month from the date of receipt of a copy of this judgment.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge