IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

MACA.No. 2438 of 2008 ( )

AGAINST THE AWARD IN OPMV 2742/2002 of PRINCIPAL MOTOR ACCIDENT CLAIMS TRIBUNAL,KOZHIKODE DATED 03-01-2008

APPELLANTS/CLAIMANTS:
----

1. ANAND, S/O.BASAVAYYAN, AGED 36 YEARS,
   RESIDING AT THELLIYAGAL HOUSE, NO.234,
   P.O.KENICHIRA, WAYANAD.

2. MINI ANAND, W/O.ANAND, AGED 27 YEARS,
   RESIDING AT THELLIYAGAL HOUSE, NO.234, P.O.KENICHIRA
   WAYANAD.

   BY ADV. SMT.K.V.RESHMI

RESPONDENTS/RESPONDENTS:
----

1. A.K.PRASANNAKUMAR, JYOTHIS,
   P.O.MADAKKIMALA, WAYANAD.[DELETED]

2. K.M.BABU, S/O.MATHAI, AGED 47 YEARS,
   KOTTAKUNNEL HOUSE, P.O.PUTHUPPADI, THAMARASSERRY
   KOZHIKODE.[DELETED]

[RESPONDENTS 1 AND 2 ARE DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 08.12.2015 IN IA 4213/15.]

3. NATIONAL INSURANCE CO.LTD,
   KALPANA SHOPPING COMPLEX,
   MAIN ROAD, KALPETTA.

   R3 BY ADV. SRI.A.A.ZIYAD RAHMAN
   R3 BY ADV. SRI.LAL K.JOSEPH
   R3 BY ADV. SRI.V.S.SHIRAZ BAVA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

M.A.C.A.No.2438 OF 2008

DATED THIS THE 17th DAY OF DECEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Casual approach made by the Tribunal in evaluating the loss due to the death of a child aged 3½ years granting a paltry compensation of ₹64,000/- is sought to be interfered, by way of this appeal preferred by the parents.

2. The deceased child,who was a pedestrian, was knocked down on 8.8.2002 by the car bearing No.KL-12-A 6871 owned, driven and insured by the respondents before the Tribunal. The loss was sought to be compensated by filing a claim petition before the Tribunal. The case was not contested by the owner or driver and the claim was sought to be resisted by the Insurer based on general grounds, as no violation of statutory/policy condition was ever pointed out. Nobody was examined on either side, but for producing and marking Exts.A1 to A4 on the part of the claimants. Based on the available materials on record, the Tribunal arrived at a finding that the accident was occurred due to the negligence on the

part of the driver of the car.

3. The amounts awarded by the Tribunal as given in paragraph No.11 are to the following extent:

Loss of expectation	:	₹40,000/-
Loss of happiness	:	₹10,000/-
Love and affection	:	₹10,000/-
Pain and suffering	:	₹ 2,000/-
Funeral expenses	:	₹ 1,000/-
Transportation	:	₹ 1,000/-

		₹64,000/-
		======

The total sum of ₹64,000/- has been ordered to be satisfied with interest @ 7.5% per annum from 4.10.2002 - the date of petition.

4. Heard arguments of the learned counsel for the appellant as well as the learned counsel for the Insurance Company.

5. During the course of hearing, the learned counsel for the appellant sought to place reliance on the decision rendered by the Apex Court in **Kishan Gopal and another v. Lala and others (2014 (1) SCC 244)**, whereby a notional income of ₹30,000/- per annum has been taken for awarding compensation

in respect of the deceased child aged 10 years, who was travelling in a trolley-tractor. On going through the facts of the said case and the amounts awarded by the Apex Court, it is seen that the course pursued by the Tribunal therein was under the particular facts and circumstances based on the finding arrived at on the basis of the evidence let in that case. Though the deceased was a child aged 10 years, he was very much assisting the parents in the agricultural operations and hence was treated as a person earning or contributing to such earning. In the judgment rendered by the Apex Court reported in **Puttamma v. Narayana Reddy (2014 (1) KLT 738)** it has been held that, in the case of children under five years a lump sum compensation of ₹1,00,000/- is to be given, whereas in the case of persons above five years, it has to be 1,50,000/- or the amounts payable as per the 2nd Schedule whichever is higher. We are also aware of the decision rendered by the Apex Court in **Kiran v. Sajjan Singh** (**2015 (1) SCC 539)** to the effect that in the case of children, they cannot be treated as non-earning members and have to be treated as a separate class, where, instead of awarding compensation under the pecuniary heads, substantial amounts should be awarded under non-pecuniary heads.

6. Striking a balance, we find it appropriate to work out the compensation in the instant case, by treating the figures given in the 2nd Schedule as a guideline so far as the multiplier to be adopted and the notional income to be reckoned. On reworking the compensation as above, taking the notional income as ₹15,000/- per annum and after deducting 1/3rd towards probable personal expenses, the compensation payable for the death is worked out as 15,000x2/3x15=1,50,000/-. The Tribunal has awarded a sum of ₹50,000/- (40,000/- for loss of expectation and 10,000/- towards loss of happiness). After setting off the said amount, balance comes to **₹1,00,000/-**. Only a sum of ₹10,000/- has been awarded towards loss of love and affection. We find it appropriate to grant a further sum of **₹40,000/-** under this head as well. The amounts awarded by the Tribunal towards pain and suffering and funeral expenses are also abysmally on the lower side. We raise the same by ₹8,000/- under the former head and ₹9,000/- under the latter head, thus granting an

additional compensation of **₹14,000/-** (i.e.,6000+8000).

7. The total balance compensation payable comes to **₹1,54,000/-** which shall be satisfied with interest @ 9% per annum from 4.10.2002, till realisation. Since the policy is admitted, we direct the Insurance Company to deposit the said amount within one month from the date of receipt of a copy of this judgment.

The appeal is disposed of as above.

Sd/-
P.R.RAMACHANDRA MENON, **JUDGE**

Sd/-
ANIL K.NARENDRAN, JUDGE

dsn

True copy

P.S.to Judge