IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

MACA.No. 2972 of 2008 ( )

AGAINST THE AWARD IN OPMV 2195/2004 of M.A.C.T.,PERUMBAVOOR

APPELLANTS/PETITIONERS 1 TO 3 IN OP(MV) 2195/04:
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1. MAHABOOB JAN W/O. LATE ABDUL SALAM
SAYID MANDANI MANZIL, PIPE LINE ROAD, ALUVA.

2. ARSHIYA D/O LATE ABDUL SALAM,
AGED 11 YEARS, REPRESENTED BY MOTHER AND LEGAL
GUARDIAN MAHABOOB JAN, -DO-.

3. AMARIYA D/O.LATE ABDUL SALAM,
AGED 6 YEARS, -DO-.

BY ADVS.SRI.GOPAKUMAR G. (ALUVA)
SRI.JIMMY JOSEPH

RESPONDENTS/RESPONDENT NO.3 AND PETITIONERS 4 & 5:
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1. NATIONAL INSURANCE CO.LTD.,
P.B.NO.6, M.M.JUNCTION, KOLENCHERRY.

2. SHIK MOHAMMED SAB, S/O SHIK RASOOL SAB,
SUGUTTOOR, KOLAR DISTRICT, KARNATAKA STATE.

3. NAJUMUNISA W/O SHIK MOHAMMED SAB,
SUGUTTOOR, KOLAR DISTRICT, KARNATAKA STATE.

R1 BY ADV. SRI.LAL GEORGE
R2&3 BY ADV. SRI.JAISON JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.2972 OF 2008

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Dated this the 6th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The widow as well as the minor children of the deceased are the appellants herein. Since the parents of the deceased were not available, they were impleaded as respondents 2 and 3 in this appeal. Mainly the challenge is on the quantum of compensation. The Tribunal has awarded a total sum of ₹3,58,350/- with interest @ 7% per annum.

2. The deceased was aged 41 at the time of the accident and he was conducting wholesale and retail business in POP Corn maize. He was riding a motor cycle bearing Reg.No.KL-7/U 9388 from west to east through Aluva Market road on the date of accident namely 21.10.2004. The offending vehicle is a bus bearing Reg.No.KL 7/AG 8355. He sustained serious injuries and was treated in the Medical Trust Hospital, Ernakulam and succumbed to the injuries on 3.11.2014.

3. The learned counsel for the appellants submitted that to

prove the business of the deceased Exts.A12 to A14 have been produced which are the Shop Inspection Report issued from Agricultural Income Tax and Sales Tax Department and certificates of registration. ₹4,500/- was claimed as the monthly income of the deceased. But the Tribunal has fixed it only @ ₹2,500/- which is too low. It is also submitted that the Tribunal has awarded only ₹ 5,000/- towards pain and suffering on the assumption that he died on the same day. ₹15,000/- has been awarded towards loss of consortium of appellant No.1 and ₹20,000/- has been awarded for loss of love and affection of appellant Nos. 2 and 3. ₹2,500/- is awarded towards loss of estate. Since documentary evidence is there to support the business conducted by the deceased, we will be justified in adopting ₹4,500/- itself as monthly income, as the accident is of the year 2004. He was conducting business in Pop Corn Maize. The multiplier going by the judgment in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)** will be 14.

4. The Tribunal has granted compensation in the following manner:

Head of claim	*Amount Awarded in rupees*
Loss of dependency	300600
Transportation expenses	2500
Damage to clothings	250
Pain and suffering	5000
Loss of love and affection	20000
Loss of consortium	15000
Loss of estate	2500
Funeral expenses	2500
Total	358350

5. We refix the compensation by taking the monthly income as ₹4500/-. Towards loss of dependency, the claimants will be entitled for ₹5,67,000/- by taking ₹4,500/- (4500 x 12 x 14 x ¾). Towards loss of consortium, ₹ 1,00,000/- is awarded and towards loss of love and affection of appellants 2 and 3, ₹1,50,000/- is granted. The deceased was under treatment upto 3/11/2004 from 21/10/2004. For pain and suffering, ₹ 50,000/- is awarded. Towards loss of estate, ₹25,000/- is awarded. It is also submitted that even though the Tribunal has assessed ₹71,000/- towards medical expenses, it was

omitted to be granted. We award ₹71,000/- for medical expenses. ₹25,000/- is awarded for funeral expenses.

6. Thus the appellants will be entitled to compensation as follows :

Head of claim	***Amount Awarded in rupees***
Loss of dependency	567000
Transportation expenses	2500
Damage to clothings	250
Pain and suffering	50000
Loss of love and affection	150000
Loss of consortium	100000
Loss of estate	25000
Funeral expenses	25000
Medical expenses	71000
Total	990750

7. We find from the award that interest is granted @ 7% per annum and we enhance the same to 9% per annum from the date of petition. Since the total amount awarded exceeds the total claim of ₹7 lakhs, the appellants will have to pay court fee for the entire amount

awarded by this Court. The same will be received by the Tribunal before disbursing the amount awarded by this Court. We find that out of the compensation awarded, appellants 1 to 3 are apportioned 30% each and 5% each is given to respondents 4 and 5. Out of the amount awarded by this Court, 50% will be shared by appellant No.1 and the remaining 50% will be equally shared by appellants 2 and 3 and the amount towards their share will be deposited in a Nationalized Bank till they attain majority. The share due to the widow can be withdrawn by her. The Insurance Company shall deposit the amount less the amount already deposited before the Tribunal within a period of two months from the date of receipt of a copy of this judgment.

The appeal is allowed to the above extent. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

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