IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 24TH DAY OF JANUARY 2024 / 4TH MAGHA, 1945

MACA NO. 510 OF 2013

AGAINST THE AWARD DATED 28.06.2012 IN OP(MV)NO.643/2011 OF THE PRINCIPAL MOTOR ACCIDENT CLAIMS TRIBUNAL,KOZHIKODE

APPELLANTS/PETITIONERS IN THE OP(MV):

1 LATHA SANTHOSH @ LATHA BAI,
W/O.LATE SANTHOSH KUMAR,SASTHRI BHAVAN,
CHELANNUR P.O., KOZHIKODE.

2 NEELIMA, AGED 13 YEARS, D/O.LATE SANTHOSH KUMAR,SASTHRI BHAVAN, CHELANNUR P.O., KOZHIKODE.

3 NEELAJ, AGED 5 YEARS, S/O.LATE SANTHOSH KUMAR,SASTHRI BHAVAN, CHELANNUR P.O., KOZHIKODE.

4 NITHA BHAI, AGED 2 YEARS
D/O.LATE SANTHOSH KUMAR,SASTHRI BHAVAN,
CHELANNUR P.O., KOZHIKODE.

5 SUMATHI, AGED 76 YEARS
MOTHER OF LATE SANTHOSH KUMAR 40 A, KONATHUVEEDU,
18, KAKKODE, PUNALOOR PATHANAPURA.

2ND, 3RD, 4TH APPLICANTS BEING MINORS REPRESENTED BY MOTHER AND LEGAL GUARGIAN WHO IS THE FIRST APPLICANT.

BY ADVS.
SRI.GEORGE KARITHANAM VARGHESE
SRI.JOSE KURIAKOSE VILANGATTIL

RESPONDENTS/RESPONDENT IN THE OP(MV):

1 PRAJEESH P.K., AGED 29 YEARS
S/O.NARAYAN, RAMATH KANDI, AYANCHERY,
VATAKARA - 673 541.

2 RAGESH SO.NARAYANAN
THAZHERAMATHKANDI HOUSE, AYANCHERY,
VATAKARA - 673 541

3 MS.HDFC ERGO INSURANCE CO.LTD.
Y.M.C.A ROAD, CALICUT - 673 001.

GEORGE CHERIAN (SR.), THIRUVALLA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 24.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ZIYAD RAHMAN, A.A, J

M.A.C.A No. 510 of 2013

Dated this the 24th day of January, 2024

JUDGMENT

The appellants were the petitioners in OP(MV) No.643/2011 on the files of the Principal Motor Accidents Claims Tribunal, Kozhikode.

2. The said claim petition was submitted by them seeking compensation for the death of one Santhosh Kumar due to the injuries sustained in a motor accident that occurred on 26.10.2010. The 1st appellant was the wife, appellants 2 to 4 were the children and the 5th appellant was the mother of the deceased. The accident occurred when the car in which the deceased was travelling hit on a divider of the road due to the rash and negligent driving of the 1st respondent, and he sustained serious injuries. While undergoing treatment, he succumbed to the injuries. The 2nd respondent was the owner of the said vehicle and it was insured with the 3rd respondent. The deceased was aged 41 years at the time of the accident and, according to the appellants, he was earning an annual income of Rs.3,00,000/- from his business. The claim petition was submitted in such circumstances seeking compensation.

3. The third respondent, the Insurance Company, filed a written statement admitting the coverage of the policy but disputed the said liability

on various grounds. The quantum of compensation was also opposed by them.

4. The evidence in this case consists of Exts.A1 to A9 from the side of the appellants and from the side of the respondent. Ext.B1 and B2 were marked.

5. After the trial, the tribunal came to the conclusion that the accident occurred due to negligence on the part of the first respondent and being the insurer of the said vehicle, the third respondent/Insurance Company was held liable to pay the compensation. The quantum of compensation was fixed as Rs.12,87,000/- (Rupees twelve lakhs eighty-seven thousand only), and the third respondent was directed to deposit the said amount along with interest @ 7% per annum from the date of petition till realisation. This appeal is submitted in such circumstances seeking enhancement of compensation.

6. Heard Adv.Sri.Jose Kuriakose, the learned counsel appearing for the appellants and Adv.Sri.George Cherian, (Thiruvalla) the learned senior counsel appearing for the third respondent-Insurance Company.

7. The only dispute in this case relates to the quantum of compensation. The learned counsel for the appellants would contend that the amount awarded by the tribunal under various heads, particularly under the head of loss of dependency, was grossly inadequate. After considering the materials placed on record, I find some force in the said contentions. It is to be noted that, the annual income claimed for the deceased was

Rs.3,00,000/-. To substantiate the said income, Exts.A5 to A7, the income tax certificates pertaining to the financial years 2007-2008, 2008-2009 and 2009-2010, were produced. The gross total income declared in the said returns were Rs.2,50,000/-, Rs.3,00,000/- and Rs.3,50,000/- for the financial years 2007-2008, 2008-2009 and 2009-2010, respectively. However, the tribunal fixed the income of the deceased as Rs.1,20,0000/- per annum and calculated the compensation. The reason stated for discarding the said income tax certificates by the tribunal was that the appellants adduced no evidence to show the nature of the business in which the deceased was engaged. It was also observed that the appellants adduced no evidence as to whether any of the appellants continued the said business. However, I am of the view that since the documents relied on by the appellants were the income tax returns submitted by the deceased himself, the same should not have been discarded as such. Of course, it is true that the appellants did not adduce any evidence to show the nature of the business, and it is not clear whether the entire income declared in the said income tax certificates was generated from his business. However, I find that the amount of Rs.1,20,000/- appears to be on the lower side. This is particularly because, from going through the Exts.A5 to A7 acknowledgments of income tax returns, it can be seen that he declared an average income of Rs.3,00,000/-. In such circumstances, I am of the view that an amount of Rs.2,40,000/- can be accepted as the annual income of the deceased by taking a balanced approach, considering the probable

income which he received from the family property or other sources.

8. From the award, it is discernible that while assessing the compensation, the future prospectus was not taken into account, whereas in the light of **National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680]**, 25 % of the monthly income ought to have been taken into account as the deceased comes within the age group of 40 to 50 years. In such circumstances, while reassessing the compensation with the above revised criteria, the amount towards loss of dependency would come to Rs.31,50,000/- (20,000 + 25%) X 12 X 14 X ¾. The amount already awarded by the Tribunal is Rs.12,60,000/- and thus, additional compensation would come to Rs.18,90,000/- (Rupees eighteen lakhs ninety thousand only).

9. The amount awarded towards funeral expenses by the tribunal was Rs.5000/- only and in the light of the **National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680],** a further sum of Rs.10,000/- is awarded. Similarly, the amount awarded towards loss of estate was only Rs.10,000/- and therefore a further sum of Rs.5000/- is awarded.

10. The next head that requires consideration is the loss of consortium. The Tribunal has awarded only an amount of Rs.10,000/- for the first respondent. However, in the light of the ***Magma General Insurance Co.Ltd. v. Nanu Ram alias Churu Ram [(2018) 18 SCC 130]*** and **United India Insurance Co Ltd V. Satinder Kaur @ Satwinder Kaur and other [2020 (3) KHC 760],** all the appellants being the wife, three children and the

mother of the deceased, were entitled for compensation @ Rs.40,000/- each. Thereby, the total amount under this head would come to Rs.2,00,000/-. Thus, after adjusting the amount already awarded under this head, the additional compensation would come to Rs.1,90,000/-. Accordingly, the total additional compensation is determined as Rs.20,95,000/- (Rupees twenty lakhs ninety five thousand only). (18,90,000 + 10,000 + 5000 + 1,90,000).

In the light of the aforesaid observations and findings, this appeal is allowed, the award dated 28.06.2012 in OP(MV)No.643/2011 passed by the Motor Accidents Claims Tribunal, Kozhikode, is hereby modified by granting an additional compensation of Rs.20,95,000/- (Rupees twenty lakhs ninety five thousand only) and the third respondent is directed to deposit the said amount along with interest @ as ordered by the Tribunal and proportionate costs, within a period of three months from the date of receipt of a copy of this judgment.

sd/-

ZIYAD RAHMAN, A.A, JUDGE

R.AV