

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

AS.No. 587 of 2000 (E)

(AGAINST THE ORDER/JUDGMENT IN OS 16/1999 of PRL.SUB COURT, KOZHIKODE DATED 30-03-2000)

APPELLANT(S)/3RD DEFENDANT:

PERUVAYAL GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
PERUVAYAL GRAMA PANCHAYATH,
POOVATTUPARAMBA,
KOZHIKODE DISTRICT.

BY ADV. SRI.R.K.VENU NAYAR

RESPONDENT(S)/PLAINTIFFS 1 TO 4 :

1. PARAKKAL MUHAMMED,
S/O. AVARANKUTTY AGED 37 YEARS.
2. PARAKKAL NAFEESA,
W/O. MUHAMMED AGED 32 YEARS.
3. E.P.BUSHARA, D/O. MUHAMMED
AGED 16 YEARS (MINOR)
4. E.P.SHASUDEEN, S/O.MUHAMMED,
AGED 13 YEARS (MINOR)

(MINORS REPRESENTED BY THEIR FATHER 1ST RESPONDENT/1ST
PLAINTIFF. ALL ARE RESIDING AT PARAKKAL HOUSE,
PANTHEERVANKAVE, AMMSOM DESOM,
KOZHIKODE TALUK.)

5. K.ALIKUTTY, S/O. AHAMMED,
KOLANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,

RAMANATTUKARA - VIA.
MALAPPURAM DIST. (DIED)
(IT IS RECORDED THAT R5 DIED VIDE ORDER DATED 30/6/2015 IN MEMO DATED
1/8/2012)

6. M.K.MUHAMMED, S/O. KUNHU,
KOYAPARAMBATH HOUSE,
P.O. VAZHAYOOR DO - DO

ADDL.R7. KABIR, S/O.ALIKUTTY,
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

ADDL.R8.SUHARA, D/O. ALIKUTTY,
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

ADDL.R9 AYISHA, W/O. ALIKUTTY
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

ADDL.R10.SALIM, S/O. ALIKUTTY,
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

(ADDL.R7 TO R10 ARE IMPEADED AS LRS OF R5 VIDE JUDGMENT DATED
30/6/2015(CMP 1018/2008))

R,R1 TO 4 BY ADV. SRI.V.V.SURENDRAN
R,R1 TO 4 BY ADV. SRI.P.A.HARISH
R,R6 BY ADV. SRI.THOMAS ANTONY
R,R6 BY ADV. SRI.K.M.JAMALUDHEEN
R, BY ADV. SRI.P.V.KUNHIKRISHNAN
R7-R10 BY ADV. SRI.K.M.FIROZ
R7-R10 BY ADV. SMT.M.SHAJNA
R7-R10 BY ADV. SRI.S.KANNAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 8-06-
2015, ALONG WITH A.S.NO.598/2000 AND CONNECTED CASES THE COURT
ON 30/6/2015 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

AS.No. 596 of 2000 (A)

(AGAINST THE ORDER/JUDGMENT IN OS 20/1999 of I ADDL.SUB COURT, KOZHIKODE
DATED 30-03-2000)

APPELLANT(S)/3rd DEFENDANT:

PERUVAYAL GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
PERUVAYAL GRAMA PANCHAYATH,
POOVATTUPARAMBA,
KOZHIKODE DISTRICT.

BY ADVS.SRI.R.K.VENU NAYAR
SRI.B.V. JOY SANKAR

RESPONDENT(S)/PLAINTIFF:

1. P.M.BEEKUTTY, W/O. P.M.MOIDEEN KOYA,
AGED 50 YEARS.
2. P.M.MUHAMMED, S/O. P.M.MOIDEEN KOYA
AGED 35 YEARS.
3. P.M.ABDUL AZEEZ,
S/O.P.M.MOIDEEN KOYA,
AGED 25 YEARS
4. P.M.ABDUL HAMEED,
S/O. MOIDEEN KOYA, AGED 18 YEARS.
5. P.M.FATHIMA, D/O. P.M.MOIDEEN KOYA
AGED 32 YEARS.
6. P.M.KADEEJA, D/O. P.M.MOIDEEN KOYA
AGED 30 YEARS.

(ALL ARE RESIDING AT PAGIDERMEETHAL HOUSE,

PAYYADIMEETHAL IN PANTHEERANKAVU AMSOM AND DESOM
KOZHIKODE TALUK, KOZHIKODE DIST.)

7. K.ALIKUTTY, S/O. AHAMMED,
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA - VIA.
MALAPPURAM DIST. (DIED)

8. M.K.MUHAMMED, S/O. KUNHU,
KOYAPARAMBATH HOUSE,
P.O. VAZHAYOOR DO - DO

(IT IS RECORDED THAT R7 IS DEAD. VIDE ORDER DATED 7/8/2002 ON MEMO
DATED 1/8/2002 CF 7760/2002)

ADDL.R9. KABIR, S/O.ALIKUTTY,
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

ADDL.R10.SUHARA, D/O. ALIKUTTY,
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

ADDL.R11 AYISHA, W/O. ALIKUTTY
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

ADDL.R12.SALIM, S/O. ALIKUTTY,
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

(ADDL.R9 TO R12 ARE IMPEADED AS LRS OF R7 VIDE JUDGMENT DATED
30/6/2015 (CMP 5789/2002))

R,R7 BY ADV. SRI.P.V.KUNHIKRISHNAN
R,R8 BY ADV. SRI.THOMAS ANTONY
R,R8 BY ADV. SRI.K.M.JAMALUDHEEN
R,R1,3TO6 BY ADV. SRI.R.RAMADAS

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 08-06-
2015, ALONG WITH A.S.NO.598/2000 AND CONNECTED CASES THE
COURT ON 30/6/2015 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

AS.No. 597 of 2000 (A)

(AGAINST THE ORDER/JUDGMENT IN OS 19/1999 of I ADDL.SUB COURT, KOZHIKODE
DATED 30-03-2000)

APPELLANT(S) : /3RD DEFENDANT

PERUVAYAL GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
PERUVAYAL GRAMA PANCHAYATH,
POOVATTUPARAMBA,
KOZHIKODE DISTRICT.

BY ADV. SRI.R.K.VENU NAYAR

RESPONDENT(S)/PLAINTIFFS 1 TO 10:

- 1.V. MOIDEEN KOYA, S/O. ALIKOYA,
AGED 68 YEARS.
2. N.IMBICHIPATHUMMAYI,
W/O. MOIDEEN KOYA,,
AGED 58 YEARS.
3. M.V.MARIYAKUTTY, W/O. D.A.USMAN,
AGED 26 YEARS.
4. UMMU HABEEBA, D/O. USMAN,
AGED 8 YEARS REPRESENTED BY 3RD PLAINTIFF.
5. MOHAMMED ASHIQUE, , S/O. USMAN,
MINOR, AGED 5 YEARS, REPRESENTED BY 3RD PLAINTIFF.
6. D.A.KHADEEJA, D/O. MOIDEEN KOYA
AGED 46 YEARS
7. D.A.MAMMED KOYA, S/O. MOIDEEN KOYA
AGED 44 YEARS.
8. D.A.ABOOBACKER, S/O. MOIDEEN KOYA
AGED 39 YEARS
9. D.A. MARIYAMBI, D/O. MOIDEEN KOYA
AGED 35 YEARS

10. D.A.SULAIKHA, D/O. MOIDEEN KOYA
AGED 24 YEARS.

(RESIDING AT VALAPPURAM HOUSE
POKKUNNU, KOZHIKODE DIST.
KOZHIKODE TALUK)

11.K.ALIKUTTY, S/O. AHAMMED,
KOLANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA - VIA.
MALAPPURAM DIST. (DIED)

12. M.K.MUHAMMED, S/O. KUNHU,
KOYAPARAMBATH HOUSE,
P.O. VAZHAYOOR DO - DO

(IT IS RECORDED THAT R11 IS DEAD. VIDE ORDER DATED 7/8/2002 ON MEMO
DATED 1/8/2002 CF 7786/2002)

R13. KABIR, S/O. ALIKUTTY,
KALANDIPURAYIL HOUSE, P.O.VAZHAYOOR,
RAMANATTUKARA.
MALAPPURAM DT.

R14.SUHARA, D/O. ALIKUTTY,
KALANDIPURAYIL HOUSE, P.O.VAZHAYOOR,
RAMANATTUKARA.
MALAPPURAM DT.

R15. AYISHA, W/O. ALIKUTTY,
KALANDIPURAYIL HOUSE, P.O.VAZHAYOOR,
RAMANATTUKARA.
MALAPPURAM DT.

R16.SALIM, S/O. ALIKUTTY,
KALANDIPURAYIL HOUSE, P.O.VAZHAYOOR,
RAMANATTUKARA.
MALAPPURAM DT.

LRS OF DECEASED R11 IS IMPEADED AS R13 TO R16 VIDE ORDER DATED
20/3/2013 IN CMP NO.5433/2002)

R, BY ADV. SRI.V.V.SURENDRAN
R, BY ADV. SRI.TOJAN J. VATHIKULAM
R,R12 BY ADV. SRI.THOMAS ANTONY
R,R12 BY ADV. SRI.K.M.JAMALUDHEEN
R,R-11 BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 8-06-
2015, ALONG WITH A.S. NO.598/2000 AND CONNECTED CASES THE
COURT ON 30/6/2015 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

AS.No. 598 of 2000 (A)

(AGAINST THE ORDER/JUDGMENT IN OS 17/1999 of I ADDL.SUB COURT, KOZHIKODE
DATED 30-03-2000)

APPELLANT(S) 3RD DEFENDANT:

PERUVAYAL GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
PERUVAYAL GRAMA PANCHAYATH,
POOVATTUPARAMBA,
KOZHIKODE DISTRICT.

BY ADV. SRI.R.K.VENU NAYAR

RESPONDENT(S)/PLAINTIFFS 1 TO 4:

- 1.K.K.SULAIKHA, D/O. AYAMMED KUTTY,
AGED 25 YEARS.
- 2.M.P.NOUFIRA, D/O. MOIDEEN KOYA,
AGED 14 YEARS (MINOR) REPRESENTED
BY 1ST PLAINTIFFS
- 3.MELEPULAPARAMBIL MARAKKAR
S/O.MOIDEEN AGED 56 YEARS.
- 4.M.P.IMBICHIPATHY, D/O. KOYASSANKUTTY
AGED 55 YEARS

(ALL RESIDE AT KOOMULLAKANDIYIL HOUSE, KODUVANMUZHI, P.O.
KARUVAMPOYIL KODUVALLY AMSOM AND DESOM
KOZHIKODE DISTRICT).

- 5.M K.ALIKUTTY, S/O. AHAMMED,
KOLANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA - VIA.
MALAPPURAM DIST. (DIED)

7. M.K.MUHAMMED, S/O. KUNHU,
KOYAPARAMBATH HOUSE,
P.O. VAZHAYOOR DO - DO

(IT IS RECORDED THAT R5 IS DEAD. VIDE ORDER DATED 7/8/2002 ON MEMO
DATED 1/8/2002 CF 77659/2002)

R,R5 BY ADV. SRI.P.V.KUNHIKRISHNAN
R, BY ADV. SRI.THOMAS ANTONY
R, BY ADV. SRI.K.M.JAMALUDHEEN
R,R1 TO R4 BY ADV. SMT.KOCHUMOL KODUVATH
R,R1 TO R4 BY ADV. SRI.JACOB ABRAHAM

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 8-06-
2015,ALONG WITH A.S. NO.599/2000 AND CONNECTED CASES THE COURT
ON 30/6/2015 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

AS.No. 599 of 2000 ()

AGAINST THE ORDER/JUDGMENT IN OS 18/1999 of I ADDL.SUB COURT, KOZHIKODE DATED
30-03-2000)

APPELLANT(S) : /3RD DEFENDANT

PERUVAYAL GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
PERUVAYAL GRAMA PANCHAYATH,
POOVATTUPARAMBA,
KOZHIKODE DISTRICT.

BY ADVS.SRI.R.K.VENU NAYAR
SRI.JOY SANKAR (B/O)

RESPONDENT(S)/PLAINTIFFS 1 TO 5/DEFENDANTS 1 AND 2:

1.K.K.USMAN, S/O. KUNHAMUTTY,
AGED 50 YEARS, KAMANAPARAMBATH HOUSE.

2. HAJIBI, D/O. ASSAINAR,
AGED 38 YEARS.

3. K.K.SIDDIQUE, S/O.USMAN
AGED 27 YEARS.

4. K.K.HAMZAI, S/O.USMAN,
AGED 25 YEARS.

5. K.K.LATHEEF,, S/O.USMAN,
AGED 20 YEARS.

(ALL RESIDE AT KUTTIKATTUR AMSOM
VELLIPARAMBA IN KOSHIKODE TALUK
KOZHIKODE DIST.)

6. K.ALIKUTTY, S/O. AHAMMED,
KOLANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA - VIA.
MALAPPURAM DIST. (DIED)

7. M.K.AHAMMED, S/O. KUNHU
KOYAPARAMBATH HOUSE,
P.O. VAZHAYOOR DO - DO

(IT IS RECORDED THAT R6 IS DEAD. VIDE ORDER DATED 7/8/2002 ON MEMO DATED 11/8/2002 CF 7761/2002)

ADDL.R8. KABIR, S/O.ALIKUTTY,
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

ADDL.R9.SUHARA, D/O. ALIKUTTY,
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

ADDL.R10 AYISHA, W/O. ALIKUTTY
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

ADDL.R11.SALIM, S/O. ALIKUTTY,
KALANDIPURAYIL HOUSE,
P.O. VAZHAYOOR,
RAMANATTUKARA,
MALAPPURAM DIST.

(ADDL.R8 TO R11 ARE IMPEADED AS LRS OF R6 VIDE JUDGMENT DATED 30/6/2015(CMP 5427/2002))

R,R6 BY ADV. SRI.P.V.KUNHIKRISHNAN
R,R7 BY ADV. SRI.THOMAS ANTONY
R,R7 BY ADV. SRI.K.M.JAMALUDHEEN
R,R1TO5 BY ADV. SRI.R.RAMADAS

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 8-06-2015,ALONG WITH AS 587/2000 AND CONNECTED CASES THE COURT ON 30/6/2015 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

AS.No. 657 of 2000 (A)

(AGAINST THE ORDER/JUDGMENT IN OS 7/1996 of I ADDL.SUB COURT, KOZHIKODE DATED 30-03-2000)

APPELLANT(S)/3RD DEFENDANT:

PERUVAYAL GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
PERUVAYAL GRAMA PANCHAYATH,
POOVATTUPARAMBA,
KOZHIKODE DISTRICT.

BY ADV. SRI.R.K.VENU NAYAR

RESPONDENT(S)/PLAINTIFFS 1 TO 6:

- 1.K.M.PAREED, S/O. MOYUTTY HAJI,
AGED 56 YEARS, MANNILA KADAVATH
HOUSE, VAZHAYOOR AMSOM DESOM,
RAMANATTUKARA, MALAPPURAM DIST.
- 2.K.M.PATHUMMA, W/O. K.M.PAREED,
AGED 50 YEARS.
- 3.K.M.MOYITTY, S/O. K.M.PAREED,
AGED 32 YEARS.
- 4.K.M.JAMEELA, D/O. K.M.PAREED,
AGED 29 YEARS.
- 5.K.M.RAZAK, S/O. K.M.PAREED,
AGED 28 YEARS.
- 6.K.M.SUHARA, D/O. K.M.PAREED,
AGED 25 YEARS.
(ALL ARE RESIDING AT MANNILAKADAVATH HOUSE,
VAZHAYOOR AMSOM AND DESOM RAMANATTUKKARA IN
MALAPPURAM DIST)

7. K.ALIKUTTY, S/O.AHAMMED,
KOLANDIPURAYIL HOUSE,
P.O.VAZAYOOR, RAMANATTUKKARA VIA
MALAPPURAM DISTRICT.

8. M.K.MUHAMMED, S/O. KUNHU
KOYAPARAMBATH HOUSE,
P.O.VAZHAYOOR DO DO

R,R7 BY ADV. SRI.P.V.KUNHIKRISHNAN
R,R1TO4&6 BY ADV. SRI.R.RAMADAS
R, BY ADV. SRI.THOMAS ANTONY
R, BY ADV. SRI.K.M.JAMALUDHEEN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 8-06-
2015,ALONG WITH A.S.NO.599/2000 AND OTHERS THE COURT ON
30/6/2015 DELIVERED THE FOLLOWING:

JUDGMENT

[AS.587/2000, AS.596/2000, AS.597/2000, AS.598/2000,
AS.599/2000, AS.657/2000]

Dated this the 30th day of June 2015

COMMON JUDGMENT

Sunil Thomas, J.

These appeals are directed against the common judgment and decree in O.S.Nos.16/99,20/99,19/99,17/99, 18/99 & O.S.No.7/1996 of the Sub Court, Kozhikode in a suit for recovery of damages.

2. One Nochikkattu kadavu of Chaliyar river formed part of the 3rd defendant panchayath. The right to ferry passengers across the river at the kadavu used to be given in auction by the Panchayath to the highest bidder. During the period 1993 - 94, the second defendant bid the auction and was confirmed in his name. It is alleged that he engaged the first defendant to row the canoe used for ferrying passengers across the Chaliyar.

3. On 26/1/1994 at about 2.45 p.m., a marriage party reached the ferry to cross the river. The canoe was rowed by the first defendant. It is alleged that immediately after it started moving,

water started seeping in through a hole in the canoe and when it reached the middle of Chaliyar river, it sank. Some of the passengers swam through the water and escaped. Six persons were drowned and their bodies were recovered later. It is alleged that the first defendant was inexperienced, canoe was in a damaged condition and that it had holes through which water entered and that it led to the incident. It is further alleged that the Panchayat never cared to inspect the canoe to ensure that it was properly maintained and that experienced persons were engaged for the purpose of rowing. Alleging that the inexperience of the first defendant, the damage to the canoe and the negligence of the defendants led to the mishap, the dependents of the deceased persons filed six separate suits.

4. The defendants appeared and contested the proceedings. It was contended by the first defendant that he was absolutely unconnected with the incident and that he was not rowing the boat on that day. According to him, one Alikutty of Villiapally was engaged to row the boat and since he could not be located, suit was filed against the first defendant. According to him, the incident occurred due to the carelessness of the passengers, who moved when the canoe reached the middle of the river. It was further claimed that the defendants were not entitled for damages and the earning capacity of the deceased persons were incorrect. The second defendant in his separate written statement contended that he had not auctioned the

right and that he had not employed the first defendant. There was no contract with the third defendant and he disputed the earning capacity of the deceased and the quantum of damages claimed. The 3rd defendant in their written statement admitted that the right to carry passengers during the period 1993-94 was auctioned, bid by the second defendant being the highest bidder and was confirmed in his favour. It was stated that he has executed necessary documents and regarding the actual ferrying, the Panchayat did not have any control. It was claimed that the Panchayat was not responsible for the incident and not liable to pay the damages.

5. On the basis of the above pleadings, evidence were let in by both sides. On the side of the plaintiffs PW1 to PW 11 were examined and Exts.A1 to A33 were marked. On the side of the defendants DW1 to DW3 were examined and Exts.B1 to B4 were marked. The court below on an appreciation of the entire evidence, granted a sum of Rs.90,000/- each in favour of the plaintiffs in O.S. No.16/99 and O.S. No.20/1999. The court granted a sum of Rs.1,99,680/- each in favour of the plaintiffs in each of the remaining cases. Aggrieved by the above judgment and decree the Panchayat has preferred separate appeals. Pending the proceedings the first defendant, died and his legal heirs were impleaded in each of the appeal by order in CMP No.5789/2002 in AS No.596/2000, CMP No.5433/2002 in AS No.597/2000, CMP No.5427/2002 in AS

No.599/2000 and I.A. No.1018/2008 in A.S. No.587/2000 and the legal representatives were brought on record. In A.S. No.657/2000, notice to the legal heirs were dispensed with and legal heirs have been brought on record. In A.S.No.599/2000 I.A. No.5432/2002 was filed and service completed on the legal heirs 7 to 10. Hence, the I.A. is allowed and the legal heirs are brought on record. Necessary amendments shall be carried out in the appeal.

6. Heard all the appeals together and perused the records. The point that arises for consideration is whether the judgment and decree of the court below is legal, correct, and sustainable.

7. The Point: It is an admitted fact that the incident occurred on 26/1/1994 at about 2.45 p.m. and six persons lost their lives. It is also not in dispute that 24 persons were traveling in the canoe when it met with the accident. The relationship of the plaintiffs to the respective deceased is also not in dispute. The suits were preceded by the lawyer notices which were replied by the second and the third defendant denying their liability. The first defendant did not reply. The records reveal that the deceased in O.S.No.16/99 was aged 9 years and the deceased in O.S. No.20/1999 was aged 14 years. All the remaining four deceased were in the age group of 20 to 35 years. According to the dependents, all the above four deceased were employed and earning. The deceased in O.S.No.16/99 was a school student.

8. To substantiate the case of the plaintiffs PW1 to PW 6 were examined. Each of the above witnesses deposed in terms of the plaintiff claim. They deposed about the accident and that it was caused by the negligence of defendants 1 to 3. Exts.A1, A10, A16 and A21, A24 and A28 are the respective postmortem reports of each of the deceased. All the postmortem reports indicate that the death was due to drowning. It is also not seriously challenged by the defendants. The oral testimony of PW1 to PW6, coupled with the postmortem reports indicate that the deceased persons died of drowning which occurred on the day of the incident, as alleged by the plaintiffs.

9. PW1 to PW6 in their respective depositions further alleged that the entire incident happened due to negligence of defendants 1 to 3. Accident was attributed to the inexperience of the first defendant as well as the lack of maintenance of the canoe by the second defendant. According to the above witnesses, the canoe was very old and damaged which led to the alleged incident. The defence set up by the defendants was that the canoe capsized due to strong wind that had occurred on that day and the consequent waves tilted the canoe. PW1 to PW6 are admittedly not eye witnesses to the above incident. Hence, their version regarding the cause of accident are not direct and are only based on hearsay.

10. The plaintiffs strongly relied on the version of PW7 to prove the negligence. PW7 was a passenger in that ill fated canoe. He

deposed that on that day, he had gone to the bridegroom's house, had lunch there and thereafter the entire marriage party proceeded towards the Kadavu for crossing the river, on their way to groom's house for the Nikkah. According to him, when the marriage party reached the Kadavu, the first defendant was waiting and he insisted that all of them would be taken at the same time, since he wanted to cross the river and to go for his lunch. According to PW7, some of the passengers raised doubt as to whether canoe can carry all the 24 passengers. Witness reiterated that it was only because of the insistence of the first defendant that all of them stepped into the canoe. He deposed that he knew the first defendant even before the incident, though he confirmed his name only after the incident. He deposed that immediately after the canoe left the shore, water started seeping in. When it reached the middle, it suddenly sank and the first defendant and few others swam to the shore. PW7 further deposed that he also swam to the shore. Version of PW7 regarding the above facts is consistent and could not be demolished in the process of cross examination.

11. On the other hand, the first defendant, as DW1, asserted that he was not connected with the accident and that he was not engaged by the second defendant. He asserted that he did not know the second defendant and had not rowed the canoe on that day. Evidently, it was a case of total denial of involvement in the incident.

According to him, he came to know about the incident only in the night of 26/1/1994. He admitted that he was accused in the connected criminal case. However, in the course of cross examination, he denied the statement in the written statement that he used to transport goods in the canoe. Thereafter, when his written statement and vakkalath were shown to him, he went to the extent of denying the signature in both. This version of DW1 evidently shows that his evidence is untrustworthy.

12. The second defendant, when examined as DW2, denied his involvement in the incident. According to him, he had not participated in the auction, he had not bid the auction and that he was not the contractor during the period 1993 - 94. He even went to the extent of stating that he was not the owner of the canoe that was involved in the accident. In the cross examination, he was confronted with Ext.A5, which is the register maintained by the Panchayat to show that auction was confirmed in favour of the second defendant. However, he denied the signature seen in Ext.A5. He was thereafter confronted with his signature in the acknowledgment card of the lawyer notice sent to him which was admitted by him. Thereafter, when Ext.A5 and acknowledgment card were shown to him, he admitted that both the signatures were similar. To a specific question regarding the entry in Ext.A5, he could not give any reply at all. When he was confronted with specific question as to whether he

had deposited 1/3rd of the auction money, he kept mum. However, he admitted that the canoe involved in the accident was got released by him from the police after executing a bond along with the first defendant. Evidently had it been a canoe belonging to somebody else there was no reason for the second defendant to get the canoe released. Even otherwise, evidence of DW3 shows that his defence was baseless and that he himself was the contractor. This is reinforced by the evidence of DW3, who is the Panchayat Secretary. He deposed that the auction during the period 1993 - 1994 was confirmed in favour of the second defendant being the highest bidder. DW3 asserted that the Panchayath had confirmed the auction in favour of the second defendant and Ext.A5 was signed by the second defendant in his presence. He further stated that the second defendant had deposited the 1/3rd of the auction amount in the Panchayath. There is nothing to disbelieve this version. Hence, it is clear that the version of DW3 coupled with Ext.A5 and the contradictory version of DW2 lead to an irresistible conclusion that the plaintiffs had succeeded in establishing that it was the second defendant who had bid the auction and that the first defendant was engaged by him.

13. To prove the question of negligence, the plaintiffs relied on the oral testimony of witnesses, especially PW7, who was the eye witness. PW7 in his deposition had stated that 24 persons had

travelled in the canoe. There is no reliable evidence regarding the size of the canoe, though PW7 has given a version about its size vaguely. However, he has mentioned that the canoe, was overcrowded. That itself is sufficient to indicate that it was beyond the capacity. He has also stated that the first defendant had insisted that all the passengers can be carried in a single journey, since he wanted to complete the journey and go for his lunch. These facts cumulatively indicate that the people beyond the capacity of the canoe were carried by the canoe. It is also in evidence that the first defendant swam to the shore. There is absolutely nothing to show that he did any act with the intention of saving any of the passengers. PW7 had further stated that when the canoe started moving, water started seeping in. The above version of PW7 has not been demolished in cross examination. Hence, even though there is no documentary evidence to show that the canoe was in a damaged condition, available oral evidence indicate that the seepage of water had resulted in the mishap.

14. Even though the plaintiffs had a case that the first defendant was an inexperienced person and was careless, there is nothing to prove it except the version that he got the canoe overcrowded. Even the version of DW 1 is to the effect that he used to row the canoe, for transporting goods. This indicates that he is not an inexperienced person. Further, the version of PW7 also does not

indicate that the inexperience of the first defendant led to the incident.

15. The defendants have set up another case that there was strong wind during the relevant time, which led to the capsizing of the canoe. This contention is disproved by Ext.P7, which is a certificate issued by the Port Officer. The above report indicate that there was no strong wind in the area and the sea was calm. None of the witness has stated that at that time there was a strong wind sufficient to capizise the canoe, thereby attribute the cause of the accident to act of God.

16. The defendants could not attribute any other reason for the incident. In the above circumstances, the concept of *res ipso locuter* can be applied. The only conclusion that can be drawn is that there was a negligence on the part of the defendants. Since the negligence of the first defendant and the overloading of the canoe coupled with the lack of proper maintenance of the canoe led to the accident, therefore, both defendants 1 and 2 are responsible. The second defendant is vicariously liable for the negligence of the first defendant. It is an admitted fact that the 3rd defendant had auctioned the right of ferry to the second defendant. It was admitted that it was done with profit motive. Ferry fare is also fixed by the Panchayath. There is no evidence to show that by contracting out, the 3rd defendant had absolved themselves from the liability or that

the second defendant was made liable to indemnify the 3rd defendant in the case of any loss. Further there are indications that the second defendant contractor alone was permitted to ferry people. Evidently the passengers were bound to use the vehicle provided by the second defendant, thereby the 3rd defendant took up upon themselves the responsibility to ensure the safety of the passengers. Evidently, the passengers had depend upon the skill and capability of the first defendant. Hence, the Panchayat by implication undertook the responsibility to ensure reasonable care and caution as expected in conducting the business and thereby to ensure that the second defendant contractor has taken all reasonable care to ensure the safety of the passengers. There is absolutely nothing on record to show that at any point of time the Panchayat or its officers had inspected the canoe or took any steps to see that the other defendants took reasonable care and caution.

17. The learned Sub Judge has also referred to the provision of the Kerala Panchayat Act to conclude that the 3rd defendant was liable. It has been noted that Section 57 of Chapter III of the Kerala Panchayat Act refers the functions, powers and property of the panchayat. Section 57 clause (5) sub clause (i) deals with the opening and maintenance of ferries and also licencing of such places opened and maintained by the private individuals. Evidently by auctioning the right of ferry, the third defendant was discharging its statutory

function for providing transportation to the public and thereby undertook the responsibility to take reasonable care and caution. In the absence of anything to show that the Panchayat has taken any reasonable care, they are also responsible.

18. As mentioned above, the victims involved in O.S. Nos.7/96,17/99,18/99 and 99/99 were employed. PWs 1 to 6 have deposed in terms of the income of the victims. The dependents of the above deceased person have stated that the victims were coolies and each got Rs.100/- per day. PWs 9, 10 and 11 are the employees of the above victims. They have also deposed that they used to give Rs.100/- per day to the victims. There is no contrary evidence. The court below has held that out of Rs.100/-, they must be utilising Rs.20/- for incidental expenses and dependents' share was only to be Rs.60/-. After deducting $\frac{1}{3}^{\text{rd}}$ for his living, the remaining went for dependents. Hence, the monthly amount set apart for the dependents was $\text{Rs.}40 \times 26 = 1040/-$ per month. The yearly income was hence quantified at Rs.12,480/-. Relying on schedule II of the Motor Vehicles Act and applying the multiplier of 16, the court arrived at a sum of Rs.1,99,600/- payable to the dependents of each of the victim involved in O.S. Nos.7/96, 17/99,18/99 and 19/99.

19. In the case of the victims involved in O.S. No.16/99 and 20/99, since they were not earning members, multiplier adopted was 15. Hence, the dependency compensation was quantified as

Rs.90,000/-. The court below also relied on the decision reported in Smt.Puttamma & Another v. D.V.Krishnappa & Another (1999 (2) A.C.C.491 (DB)). There is absolutely, nothing to show that the above computation by the court below was faulty.

20. An appreciation of the entire facts lead to the conclusion that the court below has, on a proper evaluation of all inputs, concluded that the defendants were responsible and that the dependents are entitled for compensation. Quantum fixed by the court below is also not liable to be interfered. Point answered.

21. In view of our findings above, the judgment and decree of the court below in each of the suits do not call for any interference. Considering the long delay and the agony of the family of the dependents, it is just and proper to impose costs. Hence, all the appeals are dismissed with costs payable to the plaintiffs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

The words and figures **"In AS No.599/2000 IA No.5432/2002"** occurring in in line 14 of Paragraph 5 at page 4 of the common Judgment dated 30/06/2015 in AS No.587/2000 and connected cases stand corrected as **"In AS No.598/2000 CMP No.5432/2002"** as per common order dated 24/7/2020 in AS No. 587/2000, AS No.596/2000, AS No.597/2000, AS No.598/2000, AS No.599/2000 & AS No.657/2000.

Sd/-

DEPUTY REGISTRAR

dated 25/08/2020

Sd/-

SUNIL THOMAS

JUDGE

Sd/-

THOTTATHIL B.RADHAKRISHNAN

JUDGE