

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

MACA.No. 1317 of 2004 ()

AGAINST THE AWARD IN OPMV 1129/1997 of MACT,TRIVANDRUM DATED 06-11-2003
APPELLANT(S)/1ST RESPONDENT::

R.V.KRISHNAKUMARI,
ROHINI MANDIRAM, MARKET ROAD, ATTINGAL
THIRUVANANTHAPURAM.

BY ADVS.SRI.VAKKOM N.VIJAYAN
SMT.VINITHA PRASANNAN
SMT.RAGAM.K.P.
SMT.REENA.C.STEPHENSON

RESPONDENT(S)/APPLICANT & RESPONDENTS 2 TO 4::

1. ELIZABATH ROYCHAN,
JOY COTTAGE, U.P.IV/933, BAPUJI NAGAR
PONGUMMOODU, THIRUVANANTHAPURAM.

2. T.A.MURALEEDHARAN,
MADATHUVILAKATHU VEEDU, KILITHATTUMUKKU
AVANANCHERRY P.O., ATTINGAL, THIRUVANANTHAPURAM.

3. M/S. UNITED INDIA INSURANCE COMPANY,
DIVISIONAL OFFICE, C.W.C. BUILDING, L.M.S. COMPOUND
PALAYAM, THIRUVANANTHAPURAM.

4. M/S. ORIENTAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE NO.II, ST.MARY VILLA, ULLOOR
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM.

R,R1 BY ADV. SRI.NAGARAJ NARAYANAN
R,R1 BY ADV. SRI.SAIJO HASSAN
R,R1 BY ADV. SRI.A.S.SABU
R,R1 BY ADV. SRI.VIMAL KUMAR.A.V.
R,R1 BY ADV. SRI.A.G.GIRISH KUMAR
R,R4 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
R,R3 BY ADV. SMT.RAJI T.BHASKAR
R2 BY ADV. SRI.R.NIKHIL
R2 BY ADV. SMT.R.AMLA
R2 BY ADV. SRI.P.ABDUL RAZAK

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-05-2015, ALONG WITH MACA 1318/2004, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.**

M.A.C.A.Nos.1317 & 1318 of 2004

Dated this the 22nd day of May, 2015

JUDGMENT

Ramachandran Nair, J.

Both the appeals have been filed by the common appellant, viz. the owner of the offending vehicle. The first respondent in both the appeals is the claimant, the daughter of the deceased. O.P.(MV) Nos.1128/1997 and 1129/1997 were filed by the claimant when both her parents died in the same accident. The Tribunal disposed of the cases by a common award.

2. We heard learned counsel for the appellant and learned counsel for the respondents.

3. A short narration of the facts will be necessary before going into the respective contentions of the learned counsel on both sides. The accident occurred on 22.10.1997 at about 6.15 p.m. The deceased was driving his car bearing Reg. No.KL01/G 7703 along Thiruvananthapuram - Kollam National Highway and his wife was

accompanying him. The accident occurred near Poovamppara bridge at Attingal and the offending vehicle is a private bus bearing Reg. No.KET 6845 which hit the car, as a result of which both of them sustained injuries and succumbed to it. Late John was aged 63 years and his wife Grace John was aged 62 years. A total compensation of Rs.10 Lakhs was claimed by the first respondent for the death of her father and Rs.2 Lakhs was claimed for the death of her mother. The Tribunal has granted compensation to the tune of Rs.1,56,000/- in O.P. (MV) No.1197/1997 and an amount of Rs.91,000/- was granted in O.P. (MV) No.1128/1997 along with interest at 9% payable from 1.11.1997.

4. Learned counsel for the appellant mainly raised two contentions. The first one is that the claimant is not a dependent and therefore the compensation need not have been assessed based on the multiplier method. Secondly, it is submitted that the claimant being not a dependent, 50% of the income should have been deducted towards personal expenses of the deceased.

5. Learned counsel for the first respondent opposed the above

contentions.

6. The application is one filed under Section 166 of the Motor Vehicles Act, under which a legal representative is entitled to file an application claiming compensation. Here, the claimant is the only daughter of deceased John and Grace John. Of course, the evidence is to the effect that she is married and is living in Gulf countries. According to the learned counsel for the first respondent, when examined before the Tribunal, she had explained that the father was sending amounts to her. The question will be whether the multiplier method could be adopted herein to assess the loss of dependency. Going by the plain terms of Section 166 of the Act, where a legal representative can seek remedy to enforce the liability. We are of the view that there is no restriction under the provisions of the Motor Vehicles Act. The law is well settled that a dependent is entitled to file application claiming compensation. But learned counsel for the appellant invited our attention to two decisions of this Court in **Joseph v. Giji Varghese** (2009 (4) KLT 199) and **Kadeeja v. KSRTC**

(2013 (4) KLT 683).

7. In the first of the decisions, the Division Bench was addressing a question whether the brother of the deceased who was residing separately from him, was entitled to claim compensation under Section 163A of the Motor Vehicles Act. Therein, the evidence was that the deceased was an unmarried agriculturist and the siblings of the deceased are living separately along with their families. While examining the question under Section 163A, it was held that no amount can be awarded taking note of multiplier based on the age of the deceased. The applicability of the structured formula in the Second Schedule under Section 163A of the Act was considered. Going by the facts of the said case, the case herein is distinguishable. Therefore, the said dictum will not apply. Finally, after fixing monthly multiplier, amounts have been granted towards loss of estate.

8. As far as the decision in **Kadeeja's case** (supra) is concerned, in paragraph 7 the Division Bench examined the different provisions under Sections 163A and 166 of the Act and it has been held as

follows:

“7. Under S.163A, the persons who are entitled to apply for compensation are the legal heirs, in the case of death of a person and in the case of injury, the victim. Once a claim is made under S.166 of the Motor Vehicles Act, then application for compensation can be filed by the persons enumerated in the section, namely the person who sustained injury, by the owner of the property, where the death has resulted from the accident, by all or any of the legal representatives of the deceased, or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. There is wide difference in the words used in both the sections regarding the persons entitled to apply for compensation in the case of death of a person, who died in a motor vehicle accident. Under S.166, in the case of death, the persons entitled to claim compensation are the legal representatives of the deceased. But in the case of a claim under S.163A, the persons entitled to claim compensation are the legal heirs. Further, in the case of S.166, even if, a person is not a legal heir, if he is able to prove that, he/she is a dependant of the deceased, then irrespective of the fact, whether he/she is a legal heir or not, is entitled to claim

compensation, in proportion to the extent of dependency claimed by him/her. In such cases, the dependency will have some relevance for the purpose of assessing compensation. But for a claim under S.163A, the dependency has no relevancy, because the persons who are entitled to file an application for compensation for the death of the deceased are the legal heirs and not the legal representatives. Once it is proved by the appellants that, they are legal heirs of the deceased then, in a claim under S.163A, they are entitled to claim compensation for the death of the deceased. Legal representatives include legal heirs as well and not *vice versa*.”

Learned counsel for the appellant invited our attention to the observations therein that “in the case of Section 166, even if, a person is not a legal heir, if he is able to prove that, he/she is a dependant of the deceased, then irrespective of the fact, whether he/she is a legal heir or not, is entitled to claim compensation, in proportion to the extent of dependency claimed by him/her.” The emphasis given by the learned counsel is that herein the claimant is only a legal heir and therefore the dependency factor will loom large and hence the multiplier method

cannot be applied.

9. According to us, the Bench was explaining the difference between the provisions under Sections 163A and 166 of the Act. The Bench was also of the view that under Section 166, a legal representative can maintain an application. We do not understand the principle stated therein to the extent of denying the remedy of a daughter like the first respondent herein to claim compensation consequent on the death of her parents. Therefore, we reject the said contention. It is also apposite to notice that similar questions have been considered by other High Courts in the decisions in **The Branch Manager, United India Insurance Company Ltd., Dharapuram v. Mrs. Kaaliathaal and others** (CDJ 2007 MHC 3182) and **Gajanand v. Virendra Singh** (CDJ 2008 MPH 300).

10. In **Mrs. Kaaliathaal's case** (supra), in paragraphs 13 and 14 the learned Judge considered the question whether the married daughters can maintain the claim. It was held that “the Legislature has not used the word, dependant in the Section, rather it has used the

word “all or any of the legal representative”. In the absence of class I heirs, the claimants being married daughters are not precluded from claiming compensation under the Act. They are the legal representatives, entitled to the estate of the deceased and therefore entitled to claim compensation, no matter whether they are dependants or not.” (paragraph 14). The learned Judge has also relied upon the decision of the Apex Court in **Gujarat State Road Transport corporation v. Ramabhai Prabhatbhai** (1987 ACJ 561 - SC) wherein it was held that “legal representative ordinarily means a person who in law represents the estate of the deceased person or a person on whom the estate devolves on the death of an individual.” The learned Judge has also quoted from the dictum laid down by the Apex Court. Therein, it was held as follows:

“Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury

must have a remedy.”

We respectfully follow the above dictum. Therefore, the legal representative has got right to claim compensation for the loss of estate.

11. In **Gajanand's case** (supra) also, the very same issue was considered. The claimants were the children of the deceased. It was held by the learned Judge that it may not be true that they were not financially dependent but they will be dependent on the deceased for number of reasons and accordingly it was held that they are entitled for compensation.

12. What we are considering is dependency for the purpose of claiming compensation and it is not strictly the financial dependency. When law enjoins a legal representative to claim compensation from a tortfeasor, it cannot be said that the aspect of financial dependency alone should come into play. A legal representative is entitled to claim for loss to the estate. Therefore, we reject the said contention.

13. As far as the contention that for personal expenses 50%

should have been deducted, the same also cannot be accepted, in the light of the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802-SC) wherein it was held that in cases where the number of dependents are 2 or 3, one third will have to be deducted for personal expenses. Apart from the same, as far as fixation of compensation herein is concerned, it cannot be said that the same is on a higher side. The Tribunal has adopted the multiplier which was prevalent at that point of time and arrived at the compensation.

14. In the case of deceased John, the monthly income assessed is Rs.3,000/-. Rs.5,000/- was awarded for funeral expenses, and towards loss of love and affection, Rs.15,000/- alone was awarded. In the case of the deceased mother, monthly income is taken as Rs.1,500/-. Rs.5,000/- is granted towards transportation and funeral expenses and Rs.10,000/- is granted towards loss of love and affection. Hence the compensation granted cannot be said to be excessive.

15. For all these reasons, we find no reason to interfere with the

award and the appeal is dismissed but without any order as to costs in the appeal. The first respondent is allowed to withdraw the amount, if any, remaining in deposit before the Tribunal as of now.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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