

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

MACA.No. 97 of 2006 ()

AGAINST THE AWARD IN OPMV 245/2000 of MACT, TRIVANDRUM DATED 20-01-2005

APPELLANTS/APPLICANTS 2 & 3:

1. THILAKA RAJ G.S.
S/O. LATE SUMATHI, PALLITHARA VEEDU
NEAR PUSHPAGIRI CHURCH, KUMARAPURAM, MEDICAL
COLLEGE.P.O, THIRUVANANTHAPURAM.
2. SANDHYA RANI.G.S,
D/O. LATE SUMATHI, PALLITHARA VEEDU
NEAR PUSHPAGIRI CHURCH, KUMARAPURAM, MEDICAL
COLLEGE.P.O, THIRUVANANTHAPURAM.

BY ADV. SRI.G.SUDHEER KARAKONAM

RESPONDENTS:

1. THE MANAGING DIRECTOR, KSRTC.
KERALA STATE ROAD TRANSPORT CORPORATION
THIRUVANANTHAPURAM.
2. RAMESH KUMAR,
S/O. KUNJAN PANIKER, MARUTHARA VILAKATHU PUTHEN VEEDU
VEDIVACHAN KOVIL, PALLICHAL VILLAGE
THIRUVANANTHAPURAM.

R1 BY ADVS. SRI.SAJEEVKUMAR K.GOPAL, SC, KSRTC
SRI. GOPIKRISHNAN NAMBIAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

**P.R. RAMACHANDRA MENON
&
SHAJI P. CHALY, JJ.**

M.A.C.A. No.97 of 2006

Dated this the 1st day of December, 2015

JUDGMENT

Shaji P. Chaly, J.

This appeal is filed by the applicants against the award passed by the Motor Accidents Claims Tribunal, Thiruvananthapuram in O.P.(MV) No.245/2000 dated 20.01.2005, by which the Tribunal has dismissed the claim of the applicants, in toto.

2. Brief facts for the disposal of the appeal are as follows:

3. The wife of the 1st applicant and mother of applicants 2 and 3, Sumathy aged 53 years old and a tailor by profession allegedly earning Rs.3,000/- per month, died pursuant to a road traffic accident occurred on 19.06.1998, consequent to which a claim was raised by the applicants. The deceased was travelling in a KSRTC bus bearing No.TA-579(Depot Number) proceeding to Thiruvananthapuram along the Poovar-Kanjiramkulam public road. When the bus reached near the Nabyathi junction, due to the careless and negligent driving of the bus by the 2nd

respondent, had to apply sudden brake and resultantly, the deceased was thrown inside the bus and sustained fatal injuries. Thereupon, the deceased was first taken to the Poovar Community Health Centre and then to the Medical College Hospital. She continued there as an inpatient from 26.04.1998 and was discharged on 28.4.1998. But her condition aggravated and she succumbed to the injuries on 6.7.1998. The accident had occurred solely due to the negligent driving of the 2nd respondent, is the contention of the appellants.

4. Per contra, respondents filed a written statement disputing the age, occupation and income of the deceased. The allegation of negligence attributed to the driver of the bus was denied. It was also contended that the petitioner did not sustain any injuries as a result of negligence on the part of the second respondent and further that the deceased had died due to some other ailments and not due to any injury sustained in the accident involving in the KSRTC bus.

5. The applicants did not adduce any oral evidence. Tribunal marked Exts.A1 to A6 and X1 on the side of the appellants and after evaluating the facts and circumstances of the case, arrived at a conclusion that the appellants failed to

prove that the death was caused consequent to the accident and that too due to the negligence of the second respondent driver. It is thus aggrieved this appeal is preferred.

6. Heard learned counsel for the appellants and learned Standing Counsel for the KSRTC.

7. We have gone through the records and find that the case put forth by the appellants is that, the accident had occurred due to the negligence of the second respondent by applying sudden brake and thereby the deceased travelling in the bus was thrown down to the bus itself and suffered injuries, which eventually led to her death. We have also found that F.I.R was registered only on 22.06.1998 on the basis of the statement given by the deceased even though the alleged accident had occurred on 19.6.1998. She has also stated to the Police that she was thrown in the bus consequent to the sudden braking done by the 2nd respondent and she has suffered fracture on her spine. Thereupon, the Police has registered a case alleging offences under Sections 279 and 337 IPC. The Tribunal has found that, no sufficient evidence was adduced by the appellants before it in order to substantiate the case put forth by the appellants.

8. Going by the nature of the accident and the type of

negligence attributed, definitely sufficient evidence should have been adduced before the Tribunal so as to establish that there was negligence on the part of the second respondent driver which culminated in the accident and the injury so suffered by the deceased person, led to her death.

9. However, the history of the injury is shown as “sudden onset of back ache while travelling in a bus”. The Tribunal has found that the Doctor noticed it as a case of compression fracture of L2 with no neurological deficit and therefore, she was treated with analgesics and was advised absolute rest and on 23.06.1998, a spinal jacket was given. It was also noted by the Tribunal that as to the treatment of the deceased at the Medical College Hospital, evident from Ext.X1, with a history of sudden onset of low back ache. Tribunal has also found that no postmortem was conducted. After evaluating the pros and cons, Tribunal entered into a finding that the appellants have not succeeded in proving their case that the deceased Sumathy has sustained any injury sufficient enough to cause her death. That apart, the Tribunal has entered into a specific finding that even if the deceased had actually sustained compression fracture of L2 vertebra, there was no neurological deficit. It is doubtful

whether such an injury was sufficient in an ordinary course to cause death. According to us, after considering the documents produced before it, the Tribunal was of the opinion that there was no evidence at all before it to arrive at an ultimate conclusion that the death of the deceased was occurred due to the accident that was alleged by the appellants. On a perusal of the records before us, we do not find any reason to arrive at a conclusion than the one arrived at by the Tribunal due to lack of evidence to do so.

Resultantly, the appeal fails and accordingly the same is dismissed.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
01.12.2015