IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

MACA.No. 1003 of 2006 (B)

AGAINST THE AWARD IN OPMV 895/2000 of M.A.C.T., ATTINGAL DATED 04-05-2005

APPELANT/3RD RESPONDENT :

THE MANAGER,
NATIONAL INSURANCE COMPANY LTD. P.B.No.157,
PARAMESWARA PILLAI BHAVAN, HOSPITAL ROAD, KOLLAM.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENT/APPLICANT :
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* (DIED) KUTTAPPAN NAIR,
S/O.KUNJUKRISHNA PILLAI,
KOLLAVAILAYIL PUTHEN VEEDU, AVANAVANCHERRY POST,
ATTINGAL.

(ADDL.RESPONDENTS ARE IMPLEADED AS LRs. OF DECEASED SOLE RESPONDENT AS PER ORDER DTD.28.10.15 IN I.A.3798/15.)

ADDL.R2 : SUMATHY AMMA (72 YEARS),
D/O.KUNJULAKSHMI,
VILAYIL PUTHEN VEEDU,
AVANAVANCHERRY, ATTINGAL - 695 103.

ADDL.R3 : LATHAMBIKA (37 YEARS),
D/O.SUMATHY AMMA,
-DO-

ADDL.R4 : ABHAYAMBIKA (36 YEARS),
D/O.SUMATHY AMMA,
-DO-

ADDL.R5 : KRISHNA KUMAR (35 YEARS),
S/O.SUMATHY AMMA,
-DO-

ADDL.RESPONDENTS BY ADV.SRI.M.DINESH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 15-12-2015, ALONG WITH OP(MAC).No.192/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

M.A.C.A.No.1003 of 2006 & O.P.(MAC)No.192 of 2014

Dated this the 15th day of December, 2015

JUDGMENT

Ramachandra Menon, J.

This Appeal and the Original Petition have been filed by the insurance company, being aggrieved by the course and proceedings pursued by the Tribunal, by passing an award in favour of a 'dead person' and later by substituting the additional claimants in place of the original claimant who was no more.

2. The sequence of events revealed from the proceedings filed before this Court is that on 5.5.2000, a person by name Rajapan Pillai aged 60 years, was proceeding along the road, when he was knocked down by a mini bus bearing No.KL.01/E-5808 owned, driven and insured by the concerned respondents leading to his death. A claim petition was filed by the elder brother of the deceased, by name Kuttappan Nair, aged 67 years, seeking to compensate the loss, to an extent of Rupees Two lakhs. After completing the evidence, the matter was finally

heard on '30.4.2005' and an award was passed on '4.5.2005', granting a total sum of ₹1,64,900/- as compensation payable, which was directed to be satisfied by the Insurance Company with interest @ 9% per annum from the date of the petition, i.e. 19.6.2000 till realisation together with cost of ₹1,500/-. Contending that the award passed by the Tribunal was quite on the higher side, the Insurance Company approached this Court by filing M.A.C.A.No.1003/2006, with a petition to condone delay [C.M.A.No.1088/2006] wherein notice was ordered on 9.8.2012. But the notice sent to the respondent/claimant was returned unserved, stating that the respondent/claimant was no more. In the course of further proceedings stated by the appellant/insurance company to bring the legal heirs in the party array, it was revealed that the death of the claimant had occurred on '14.2.2005', that is, much before the date of 'hearing' and the date of passing of the award. It was also revealed to the appellant/insurance company that the Tribunal, pursuant to the further proceedings filed by the widow and children of the claimant Kuttappan Nair, had allowed the I.As.

filed by them to set aside the award; to pass a fresh award in the name of the additional claimants and to disburse the amount ordered as per the earlier award to the additional claimants. In the said circumstances, since there was no other alternative for the appellant/insurance company, they approached this Court by filing O.P.(MAC)No.192/2014, wherein notice was ordered and an interim order was passed, intercepting the coercive proceedings in the meanwhile.

3. The appellant/Insurance Company took further steps to bring the additional claimants who filed the I.As. before the Tribunal leading to the modified order, by filing necessary Interlocutory Applications in the appeal and they stand impleaded as the additional respondents 2 to 5.

4. During the course of hearing it is submitted by the learned counsel appearing for the appellant that the proceedings pursued by the Tribunal are not correct or sustainable at all. As a matter of fact, the 'hearing' of the case was held on '30.4.2005', followed by the award passed on '4.5.2005', whereas the claimant Kuttappan Nair had taken his last breath much earlier

on '14.2.2005'. Under such circumstances, the course provided under Order XXII Rule 6 of the C.P.C. is not attracted. This was sought to be rebutted by the learned counsel appearing for the respondents/additional claimants stating that a learned Single Judge of this Court has held in **Gopalan Vs. Nandini Narayanan (2015 (2) KLT SN 4 (C.No.5)** that, merely for the reason that a death of a party has taken place before passing the verdict, it will not make the decree a nullity and that exemption can be drawn if the decree stands 'in favour of' the person concerned.

5. The learned counsel appearing for both the sides sought to rely on several judgments as to the scope of the decree passed involving a dead man. Placing reliance on the decision rendered by the Apex Court in **N.Jayaram Reddi & another Vs. The Revenue Divisional Officer and Land Acquisition Officer, Kurnool (AIR 1979 SC 1393)**, it is stated that the decree passed against a dead person is not a nullity in all cases, and that exemption could be drawn. With regard to the verdict passed by the learned Single Judge of this Court in **Gopalan Vs.**

Nandini Narayanan (2015 (2) KLT SN 4 (C.No.5), the learned counsel for the insurance company submits that the said case is having no application, as it was a 'compromise decree' and by virtue of the crystal clear difference between the factual sequence. The learned counsel appearing for the additional claimants submits that, in so far as the additional claimants are concerned, the 'lis' projected before the Tribunal had already culminated in an Award/decree and since the said Award/decree stood in favour of the claimant, which could very well be got executed by the additional claimants who are the widow and children of the deceased claimant. In response to the submission made by the learned counsel for the appellant/insurance company that no 'loss of dependency' could be claimed by the widow and children of the deceased claimant, in respect of the death of the brother-in-law of the widow of the claimant occurred due to the road traffic accident, it is stated that, since the issue involved had already got fructified in the form of a decree, the question of dependency needed no more consideration and that the additional claimants could simply step into the shoes of the original claimant, to get the decree executed.

6. The reply given by the learned counsel for the appellant/insurance company is that the Award/decree passed by the Tribunal has already been set aside by the Tribunal and as such, the question now to be considered is whether the Tribunal could have simply substituted the names of the additional claimants in the I.As. filed by them as the beneficiaries, in place of the deceased original claimant; instead of passing a fresh decree, the earlier one having already been set aside by the Tribunal itself. This is more so, since the right to challenge the award/decree is virtually lost forever, for want of any Award/decree; as the appeal preferred by the insurance company (M.A.C.A.No.1003/2006) being aggrieved by the original award dated 4.5.2005, has virtually become infructuous, since the award under challenge is already set aside by the Tribunal, without passing a fresh award and in turn making the appellant a loser, disabling to file any appeal under Section 173 of the M.V.Act. This Court now finds considerable force in the said submission.

7. Admittedly, the Award already passed by the Tribunal has been set aside, based on I.A.Nos.3926, 3927 of 2010 and 2398/2012 filed by the additional claimants themselves, seeking to set aside the award passed in favour of the deceased original claimant. As such, this Court does not find it necessary to go into the aspect as to whether the decree could have been or should have been set aside by the Tribunal and issue remains more with regard to the further course of action. The additional claimants have been brought in, substituting them in place of the deceased original claimant as per the orders passed in the concerned I.As. and the award amount has been directed to be given to the additional claimants. This procedure does not appear to be correct and since the award has already been set aside, it was necessary for the Tribunal to have passed a 'fresh award' based on the actual facts and figures. It is open for the Tribunal to consider whether the additional claimants are entitled to have all the benefits as sought for. If the verdict to be passed as above goes against the rights and interest of the insurance company, it is always open for them to have it challenged as well.

8. In the above circumstance, we hold that the matter requires to be reconsidered by the Tribunal by passing a fresh award after hearing the additional claimants and also the concerned respondents, particularly the insurance company, with liberty to them to substantiate the actual facts and figures, also by letting in additional evidence, if so desired. Since the matter is an old one, we direct the Tribunal to finalise the proceedings as above at the earliest, at any rate, within 'four months' from the date of receipt of a copy of this judgment. It is made clear that all issues are left open and the parties are free to appraise the position, both legal and factual, before the Tribunal in support of the rival contentions. The parties shall appear before the Tribunal on **11.01.2016**.

9. In view of the submission made by the learned counsel appearing for the insurance company across the Bar that the entire amount has already been attached and realised and since the disbursement has not taken place pursuant to an intervention made by this Court in O.P.(MAC)No.192/2014, there will be a direction to the Tribunal to have the said amount caused to be

deposited in a nationalised bank generating interest, so that it will go to the benefit of either side, who succeeds in the proceedings.

The Appeal and the Original Petition (MAC) are disposed of accordingly.

Sd/-
P.R.RAMACHANDRA MENON, JUDGE

Sd/-
ANIL K.NARENDRAN, JUDGE

skj

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P.A to Judge