

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

MACA.No. 1531 of 2005

AGAINST THE AWARD IN OPMV 1131/1997 of M.A.C.T., PALAKKAD
DATED 23-02-2005

APPELLANT(S)/APPELLANT/CLAIMANT:

KANNAYI, W/O.LATE PAZHANIMALA,
RESIDING AT CHETTITHARAKADE, MOOLAMKODE P.O.,
KIZHAKKANCHERRY, ALATHUR TALUK, PALAKKAD.

BY ADVS.SRI.LIJU. M.P

SRI.M.V.BIPIN

RESPONDENT(S)/RESPONDENTS:

* 1. M.J.ALEX, S/O.JOSE, IV/160, UNIT ROAD,
KURIACHIRA, TRICHUR. (DELETED)

2. NATIONAL INSURANCE CO.LTD.,
ERNAKULAM.

3. K.PRASANNA KUMAR, S/O.KUTTAI,
CHETTITHARAKADE VEEDU, MOOLAMKODE P.O.
KIZHAKKENCHERRY, ALATHUR TALUK.

4. NATIONALM INSURANCE CO.LTD.,
FORT MAIDAN, PALAKKAD.

5. M.K.VARKEY, S/O.KURIAN,
CHAKIYATHMOODIL, EDALAKKADU, ANGAMALI,
ERNAKULAM DISTRICT.

* RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY
AT THE RISK OF THE APPELLANT AS PER ORDER DATED
11/12/13 IN I.A.NO.3247/2013 IN MACA NO.1531/2005.

R2 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 22-09-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

M.A.C.A. No.1531 of 2005-D

Dated this the 22nd day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The award passed by the Motor Accidents Claims Tribunal, Palakkad, in O.P.(MV) No.1131/1997 granting only a compensation of ₹71,500/- with interest in respect of the death of the son of the appellant made to approach this Court with this appeal, mainly challenging the quantum, i.e., inadequacy of the compensation awarded and also as to the fixation of negligence.

2. The pleadings and proceedings reveal that the deceased, aged 28 years, was riding a scooter bearing Registration No.KL-9D/6450 with the owner by name

'Prasannakumar' on the pillion (who is the 3rd respondent herein) and while so, the scooter hit against the rear side of a lorry bearing Registration No.KL-8F/972 which was lying parked on the side of the road. The accident occurred on 14/5/1997 at about 7 p.m. Because of the fatal injuries resulted, the son of the appellant bid farewell to this world. Some injuries were caused to the 3rd respondent, who was sitting on the pillion. This led to two separate claim petitions preferred as O.P.(MV) Nos.1131/97 and 1535/97, which were tried jointly. The insurer happens to be the same in respect of both the vehicles. In the claim petition preferred by the appellant herein, negligence was attributed on the driver of the lorry which was parked on the side of the road, whereas in the other claim petition preferred by the owner of the vehicle, it was contended that the accident was solely due to the negligence on the part of the deceased who was riding the scooter. It is stated that 'a petty' case

was registered against the driver of the lorry; whereas a crime was registered against the deceased/rider of the scooter. After detailed investigation, the police submitted a Final Report, wherein negligence was solely attributed on the rider of the scooter, as evident from Ext.A8 Final Report. The Insurance Company alone sought to contest the matter, while the others were set ex parte. The evidence before the Tribunal consists of the depositions given by the two claimants and the documentary evidence produced as Exts.A1 to A16. After evaluating the entire evidence on record, the Tribunal arrived at a finding that the accident was solely because of the rashness and negligence on the part of the rider of the scooter i.e., the deceased and proceeded to consider the matter accordingly.

3. With regard to the claim preferred by the appellant, the Tribunal observed that no evidence was adduced with regard to the alleged avocation as rubber tapper and as to the monthly income, the

Tribunal reckoned the notional income as ₹1,500/- per month and awarded compensation for loss of dependency, after reducing 1/3rd towards personal expenses. The amounts awarded by the Tribunal under different heads are as given below:

Loss of dependency	-	₹ 60,000.00
Transportation expenses	-	1,500.00
Funeral expenses	-	2,000.00
Loss of estate	-	2,500.00
Pain and suffering	-	5,000.00
Cost	-	500.00

Total	-	₹ 71,500.00
		=====

4. Considering the age of the appellant, who had already crossed the age of 60 years, the Tribunal reckoned the multiplier of '5' as per the 2nd Schedule and worked out the loss of dependency as ₹60,000/-. It was by adding other amounts, as mentioned above, that the total compensation was fixed at ₹71,500/- and directed 3rd respondent/Insurance Company to have it satisfied indemnifying the 4th respondent/Insurance

Company who was the owner of the scooter.

5. Heard both sides.

6. The learned counsel for the appellant submits that the negligence fixed solely upon the rider of the scooter is not correct and that the lorry was lying parked in such a manner as it prevented the free access to the commuters. It was sought to be substantiated by filing Ext.A9, which is a photocopy of the proceedings of the police as per which, a 'petty case' was registered against the driver of the lorry for wrongly parking the vehicle. The case sought to be projected by the appellant/claimant was, however, rejected by the Tribunal, as observed in the award, with reference to the investigation conducted by the police and the filing of 'Final Report', wherein negligence was solely fixed upon the rider of the scooter.

7. The learned counsel for the Insurance Company submits that, going by the available

materials, it is a case of 'self-accident' and that the claim petition preferred by the appellant/claimant was under Sec.163A of the M.V. Act. It is stated that the 3rd respondent/Insurance Company being the insurer of the scooter which was being ridden by the deceased rider (who himself was found liable for the accident) the claim is not liable to be satisfied by the Insurance Company, by virtue of the law declared by the Supreme Court in National Insurance Company Limited v. Sinitha [2011 (4) KLT 821 (SC)]. The learned counsel submits that the matter was further considered by a Full Bench of this Court and the position stands well explained as per the decision reported in Oriental Insurance Co. Ltd. V. Joseph [2012 (2) KLT 132 (FB)] (to which I was also a member).

8. With regard to the question whether the fixation of negligence by the Tribunal was correct or proper, it has to be noted that the claimant was not

supposed to plead or prove negligence in a claim under Sec.163A of the M.V. Act. That apart, even if a different view is possible, based on the materials on record, the fact remains that, the Insurance Company happens to be the same, having insured both the vehicles i.e., scooter as well as the lorry which were involved in the accident. The insurer has not chosen to challenge the finding and fixation of liability, which has become final; as no appeal or cross-objection is filed from their part. As such, this Court does not find it necessary to have a hair-split analysis on the question of negligence or apportionment; but for considering whether the multiplier adopted by the Tribunal while considering the claim petition under Sec.163A of the M.V. Act was correct or not.

9. Obviously, the multiplier adopted by the Tribunal with reference to the age of the claimant (who was aged above 60) is '5'. The law has now been correctly declared by the Apex Court to the effect

that, the proper multiplier has to be fixed with reference to the age of the deceased. [see: Sarla verma v. Delhi Transport Corporation (2009 (6) SCC 121 = 2010 (2) KLT 802 (SC)]. This being the position, it is only a matter for re-calculation, applying the correct multiplier and as such, we find it fit and proper to have such exercise done adopting '17' considering the age factor of the deceased. Under such circumstance, the loss of dependency comes to Rs.2,04,000/-. After giving credit to a sum of Rs.60,000/- awarded by the Tribunal, the balance comes to Rs.1,44,000/-. We award the said amount. We also find that despite the fact that the claim preferred under Sec.163A of the M.V. Act, the Tribunal awarded only Rs.2,500/- towards funeral expenses which ought to have been Rs.5,000/-. The balance figure comes to Rs.2,500/-. In the said circumstance, the total balance compensation payable comes to Rs.1,46,500/- (Rupees One lakh forty six thousand and

five hundred only) which shall be satisfied by the 3rd respondent/Insurance Company with interest at the rate of 9% per annum from the date of filing the claim petition before the Tribunal, till the date of deposit. Since the policy is not disputed, the amount shall be deposited by the Insurance Company before the Tribunal within a period of one month from the date of receipt of a copy of this judgment.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge