

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

MACA.No. 1936 of 2005 ()

AGAINST THE AWARD IN OPMV 561/1996 of MACT, TRIVANDRUM DATED 20-04-2004

APPELLANTS/PETITIONERS:

1. PPUSHPAVALLY AMMAL,
C/O. JAGADAMMA, SUTHALAM, N.C.C. ROAD
PEROORKADA P.O., THIRUVANANTHAPURAM.
2. P.R. SALINI, SUTHALAM, N.C.C. ROAD,
PEROORKADA P.O., THIRUVANANTHAPURAM.
3. P.R. SANDHYA, SUTHALAM,
N.C.C. ROAD, PEROORKADA P.O., THIRUVANANTHAPURAM.

BY ADVS. SRI. M. GEORGE THOMAS
SRI. S. D. ASOKAN

RESPONDENT(S):

1. HAV. KULVINDER SINGH,
(NO. 2476104), 20, PUNJAB REGIMENT
C/O. 99 APO.
2. THE OFFICER COMMANDING, 20, PUNJAB
REGIMENT, C/O. 99 APO.

R1 BY ADV. SRI. P. GOPINATH MENON

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

dsn

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

C.M.Application No.2723 OF 2005

&

M.A.C.A.No.1936 OF 2005

DATED THIS THE 9th DAY OF NOVEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Dismissal of the claim petition preferred by the appellant seeking for compensation for the death of the husband of the first appellant and father of appellants 2 and 3 is under challenge in this appeal. Since there is a delay of 291 days in filing the same, it is sought to be condoned by filing C.M.Application No.2723/2005. The reasons stated in the affidavit filed in support of the application to condone delay as given in paragraph No.4 of the affidavit reads as follows:

"4. The final order was passed by the Motor Accident Claims Tribunal, Thiruvananthapuram on 20.4.2004. An application for certified copy of the order was filed by my counsel on 24.4.2004. The certified copy became ready on 12.11.2004. 17.11.2004 was notified as the date for receipt of the copy of judgment. The certified copy of the judgment was received on behalf of my counsel on 16.11.2004. Though was in Thiruvananthapuram during October, 2004, I went to Gauhati for joining duty on 13.10.2004. Though I came to know about the receipt of the copy of the order in November, 2004,

I could not obtain leave, come to Thiruvananthapuram and make arrangements for filing the appeal in time. Though I made all my earnest efforts to come to Thiruvananthapuram, I could reach Thiruvananthapuram only on 13.10.2005 because of the non-sanctioning of leave. Immediately after reaching Kerala, I approached my counsel at Thiruvananthapuram for making arrangements for filing the appeal. Since I was not aware of any Advocate in Ernakulam, I contacted the present counsel with the help of my counsel who conducted the case in the Motor Accident Claims Tribunal, Thiruvananthapuram.

2. After hearing both the sides, we find the explanation offered as satisfactory and as such, we condone the delay and proceed to hear the matter on merits.

3. The accident was allegedly occurred on 8.12.1995. It is stated that the deceased, who was aged 47 years and employed as welder in the Boarder Roads Organisation attached to the Western Military Base Workshop at Pathankot, earning a monthly salary of ₹4,500/-, was proceeding along the road on a bicycle and while so at about 5 p.m. on 8.12.1995, he was knocked down by a scooter bearing No.PB 06/5095 ridden by the 1st respondent, which was stated as belonging to the 2nd

respondent. Immediately, he was taken to hospital where he was declared as dead, which led to the claim petition preferred by the widow and the children.

4. The evidence adduced before the Tribunal consists of the oral testimony of PWs 1 to 3 and documents produced as Exts.A1 to A7. The 1st respondent was examined as RW1. After analysing the materials on record and based on the assertion made from the part of the 1st respondent, that he himself was the owner and rider and that the 2nd respondent was not involved in any manner, the matter was dealt with accordingly. The Tribunal found that, as per the postmortem report, the death was due to acute myocardial infraction. The observations made in paragraph No.11 of the award are in the following terms.

"11. The postmortem report is the most important document in this case and that alone would help to arrive at a conclusion regarding the accident or the cause of death. It is pertinent to note that the deceased did not sustain any external or internal injuries. There was not even a scratch on his body. The Doctor has noted that there was a small whitish gray patch in the heart of the deceased, which according to him was due to acute myocardial infraction. Column 3 of the postmortem report

shows that the deceased was having a condom with semen in it. Column 11 indicates that there was semen present in his penis. This would indicate that there was a possibility that the deceased had sexual intercourse shortly before his death. Admittedly, as per the testimony of the witnesses, the deceased had diabetics and they denied of his having any heart ailment. The applicants have not examined any medical authority to establish that myocardial infraction could be the result of an accident or fall from a cycle. A cardiac arrest could be sporadic. It could also be the result of some excitement or exertion such as riding a cycle or having extramarital sexual relationship. Hence the possibility of the myocardial infraction being the result of the deceased having sexual intercourse before his death or due to his riding a cycle is also not ruled out. Under the circumstances, it is very difficult to conclude that the scooter allegedly belonging to the first respondent was involved in a collision with the cycle belonging to the deceased and that the deceased had sustained injuries which resulted in a cardiac arrest. The fact that deceased Rangan met with a very unfortunate death leaving the applicants without any support cannot be a reason to find that the first respondent responsible for is death without there being sufficient evidence to indicate that. In the circumstances, Issue No.1 is answered against the applicants. And I conclude that is no sufficient material to conclude that there was an accident involving the vehicle of the first respondent and that had

resulted in the death of Rangan. Issue Nos.1 and 2 are answered accordingly. "

It is evident from the award that no external or internal injury was suffered by the deceased and further that there was not even a scratch over his body. It was in the said circumstances, that the Tribunal declined interference and dismissed the claim petition holding that the cause of death was only to due cardiac arrest and that no damage, loss or adverse circumstance was caused by the respondents with involvement of the scooter bearing No.PB 06/5095.

After hearing, this Court finds that the finding rendered by the Tribunal is well supported by reasons, particularly the documentary evidence on record. Accordingly, interference is declined. Appeal stands dismissed.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn

True copy

P.S.to Judge