

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

MACA.No. 2016 of 2012 ()

AGAINST THE AWARD IN OPMV 217/2009 of M.A.C.T., KOTTAYAM DATED
18-05-2012

APPELLANT/2ND RESPONDENT:

NATIONAL INSURANCE COMPANY LTD.
PALA NOW REPRESENTED BY ITS MANAGER
KOCHI REGIONAL OFFICE, OMANA BUILDING, M.G.ROAD
KOCHI-35.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONERS AND RESPONDENTS 1, 3 AND 4:

1. SUJA GEORGE
PULIMOOTTIL HOUSE, CHANTHAKADAVU, NEAR KERALA KAUMUDI
KOTTAYAM, PIN-686320.

2. GEETHA HUNNA GEORGE (MINOR)
PULIMOOTTIL HOUSE, CHANTHAKADAVU, NEAR KERALA KAUMUDI
KOTTAYAM, PIN-686320.

3. TERRY GEORGE (MINOR)
PULIMOOTTIL HOUSE, CHANTHAKADAVU, NEAR KERALA KAUMUDI
KOTTAYAM, PIN-686320.

4. P.K.KORAH
PULIMOOTTIL HOUSE, CHANTHAKADAVU, NEAR KERALA KAUMUDI
KOTTAYAM, PIN-686320.

5. N.M.THOMAS
NALLIVEETIL, ROSE VILLA, PULIYANNOOR P.O.
PALA-686001.(DELETED)

MACA NO.2016/2012

6. V.R.MOHANAN,
S/O.RAGHAVAN, VARAKUKALAKUZHIYIL HOUSE, AVARMA
PERUVA P.O., PIN-683315.(DELETED)

7. THE MANAGING DIRECTOR
KSRTC, THIRUVANANGHAPURAM
PIN-695503.

(MINOR RESPONDENTS 2 AND 3 ARE REPRESENTED BY THEIR
MOTHER 1ST RESPONDENT)

* RESPONDENTS 5 AND 6 ARE DELETED FROM THE PARTY ARRAY
VIDE ORDER DATED 22.1.2015.

R1-R4 BY ADV. SRI.JAMES ABRAHAM (VILAYAKATTU)
R7 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA, SC, KSRTC
BY SRI.JOY GEORGE, SC, K.S.R.T.C.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 01-04-2015, ALONG WITH MACA. 2568/2012, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

M.A.C.A.Nos.2016 & 2568 OF 2012

Dated this the 1st day of April, 2015

JUDGMENT

Ramachandran Nair, J.

Both these appeals arise from the award in O.P.(MV) No.217/2009 of the Motor Accidents Claims Tribunal, Kottayam. The claimants have come up in appeal in M.A.C.A.No. 2568/2012 and the Insurance Company has come up in appeal in M.A.C.A.No.2016/2012.

2. We heard the learned Senior Counsel for the Insurance Company Sri.Mathews Jacob, the learned counsel for the claimants Sri.James Abraham and the learned standing counsel for the KSRTC Sri.Joy George.

3. First we will consider the contention in M.A.C.A.No.2568/2012. The learned Senior Counsel for the Insurance Company submitted that two vehicles were involved in the accident and the liability is fastened on the registered owner and the insurance company of the Maruthi van, whereas the death occurred actually

because the deceased was run over by a KSRTC bus. It is therefore submitted that there is no reason to exonerate the Kerala State Road Transport Corporation from the liability. It is also submitted that the claimants in the claim petition have alleged negligence on the part of the driver of the KSRTC also.

4. Before going into the further contentions we will refer to the accident that had occurred and the details of the same. It occurred on 7.10.2008 at 2.10 p.m. The deceased was riding his motor cycle bearing Reg.No.KL 5/Y 9971 along the MC road from Nagampadam to Kottayam (from north to south). When he reached in front of Subhash Restaurant, a Maruthi van bearing Reg.No. KL 5/K 7808 driven by the first respondent before the Tribunal and coming from the opposite direction (south to north) hit the motor cycle. The deceased was thrown down and the KSRTC bus bearing Reg.No.KL 15/4657 which was being driven by the third respondent before the Tribunal ran over the body of the injured. He succumbed to the injuries on the way to the hospital. In support of the case of the Insurance

Company, the learned Senior Counsel relied upon the scene mahazer - Ext.A3 and other documents.

5. The learned counsel for the KSRTC as well as the learned counsel for the claimants submit that the Tribunal found negligence against the driver of the van for causing the accident and fastened the liability on the owner and insurer accordingly. The evidence in this case has been discussed in paragraph 8 of the award. Ext.A1 is the copy of the FIR and Ext.A2 is the copy of the charge sheet. The Tribunal has found that going by Exts.A1 to A4 and A6 Police records, the accident happened due to the rash and negligent driving of the Maruthi van driven by the first respondent and hence he is responsible for the accident. In this context the Tribunal relied upon the judgment in **New India Assurance Company Limited v. Pazhanlammal (2011 (3) KLT 648)** to hold that production of Police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under Section 166. The Tribunal also relied upon the later judgment in **National Insurance Company Limited v. Nirmala Balachandran**

(2012 (1) KLT SN 132), wherein also it was held that final report filed by the Police in the absence of better evidence can be acted upon by Courts to come an appropriate conclusion on question of negligence.

6. The Insurance Company has not adduced evidence to disprove the contents in the charge. We have gone through the Police records, including the inquest report Ext.A4 which will show that the accident occurred while the deceased was going through the road in his vehicle. Due to the impact of the accident, namely hit on the motor cycle by the van, he was thrown down on the road. A KSRTC bus was coming behind the motor cycle. The offending vehicle was coming through the opposite direction in which the deceased was proceeding. He was thrown on the road under the KSRTC bus and the right side back wheels of the KSRTC bus ran over him. Of course serious injuries have been sustained by him when the bus ran over the body of the deceased.

7. Herein we have to segregate the details to find out who

caused the accident. Going by the Police Charge the accident was caused by the driver of the van. Due to the impact of the hit on the motor cycle by the van , the deceased was thrown under the KSRTC bus. Going by the report of the Motor Vehicle Inspector, the motor cycle as well as the van had sustained serious damage.

8. The next question is whether the driver of the KSRTC bus was in any manner negligent in causing the accident. Herein we will have to go by the charge sheet finalised by the Police wherein the driver of the van has been arrayed as the accused. There is no evidence to disprove the contents of the Police charge. No other witnesses have been examined also. Of course due to the impact of the hit of the motor cycle, he was thrown on the road and we can definitely visualize the scene, where he was thrown under the KSRTC bus and therefore as far as driver of the bus is concerned, he could not have expected such an incident whereby the deceased came in contact with the back wheel of the bus. In the said circumstances we cannot attribute negligence even partly on the driver of the bus. Therefore, there is no reason to

interfere with the finding of the Tribunal regarding negligence.

9. Then the learned Senior Counsel submits that atleast the KSRTC will have to bear the burden of payment of compensation to the extent that is provided under Section 140 of the Motor Vehicles Act. Of course, the principle of 'no fault liability' has been enumerated under the said provision. Herein the Tribunal found fault with the driver of the van and negligence has been attributed and found against the driver of the van and compensation has been finalised accordingly. Therefore it may not be a case for invoking the principle for grant of compensation under Section 140 also.

10. As far as the quantum of compensation is concerned, the learned Senior Counsel for the Insurance Company invited our attention to the quantification of the amount in paragraphs 10 and 11 of the award. The deceased was aged 47 and above and was working as a development officer in United India Insurance Company. It is submitted that the Tribunal has arrived the monthly income at ₹ 27219/- and 30% was added for future prospects and finally the

monthly income has been fixed at ₹ 35,384/-. After adopting the multiplier of 13 and reducing the amount towards personal expenses ($\frac{1}{4}$), the amount towards loss of dependency has been quantified as ₹ 41,39,928/-. In this context, it is submitted by the learned Senior counsel that the Tribunal has not deducted any amount towards income tax payable.

11. Before considering the said contention, we will have to consider another point raised by the learned counsel for the claimants with regard to the adoption of monthly income of the deceased. The learned counsel for the claimants is relying upon Annexure A1 produced along with the appeal, which according to the learned counsel shows that the the monthly income of the deceased was refixed at ₹33,037/- for the month of September 2008. The serious objection raised by the learned Senior Counsel for the Insurance Company is that the said document was not produced before the Tribunal and the Company did not get an opportunity to challenge the same. It is submitted by the learned counsel for the claimants that being a

certificate issued by the employer, it can be accepted readily. The question is whether the document was available before the Tribunal and whether there was any reason for the claimants not to produce the same also. Of course the document will show that it is issued based on the revision of salary of the deceased. Whether it was a revision in favour of the deceased alone or of every one of the employees is a matter which should be taken into consideration. When the provision of Order XLI Rule 27 is invoked, we find that the objection raised by the learned Senior Counsel for the Insurance Company cannot be ignored. Since the document is not admitted by the second respondent Insurance Company, we will have to go by the monthly income as fixed by the Tribunal. The revision of salary evidently is after his death which means that he had no occasion to enjoy the same. Of course, the employer has granted the benefits pursuant to the revision. But for fixing compensation, according to us, the salary and other allowances etc. of the deceased from whatever sources as on the date of his death will have to be reckoned for assessing the contribution to the family.

If that be so, from out of the total compensation arrived at by the Tribunal, 10% will have to be deducted towards income tax. The learned counsel for the claimants then submitted that along with I.A.No.1338/2015 in M.A.C.A.No. 2568/2012 , the appellants have produced Form 16 for the assessment year 2009-2010 which will show that the gross total income will come to ₹ 4,49,729/- and the tax paid for that year is ₹17,075/-. It is therefore submitted that by deducting ₹17,075/- from the gross income of ₹ 4,49,729/-, the amount can be refixed by this Court. Therein also, we find that the same is for the entire year namely ending on 31.03.2009. The accident was on 7.10.2008. Therefore it may not be proper for us to reckon the same.

12. The only method possible is to deduct 10% from the amount arrived at by the Tribunal towards payment of income tax and refix the amount accordingly.

13. As far as pain and suffering of the deceased is concerned, ₹10,000/- has been granted by the Tribunal. But towards loss of love and affection, ₹10,000/- alone has been granted. Herein the vehement

argument raised by the learned counsel for the claimants is that one of the minor children is a mentally retarded one. Therefore the same should be the factor which should go in favour of the claimants for getting more amounts. The learned Senior Counsel for the Insurance Company submits that the contribution payable to the family consequent on the untimely death of the victim alone will be a factor. As far as individual factors in respect of each claimant is concerned, there is no other method to quantify them. As far as this aspect is concerned, going by the decision of the Apex Court in **Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC)** followed by other later judgments, the Honourable Supreme Court has been granting ₹1,00,000/- towards loss of love and affection. As a minor child, the said item of compensation will go in favour of the mentally retarded daughter also. But in the light of the later decision of the Apex Court in **Savitha v. Binder Singh (2014 (4) SCC 505)**, we award a sum of ₹2,00,000/- towards loss of love and affection in favour of the two minor children. We also award a sum of ₹1,00,000/- towards loss of consortium. As far as loss

of estate is concerned, the claimants will be entitled to more amounts since he was a senior officer. We award a sum of ₹75,000/- under this head. Towards funeral expenses, we award a sum of ₹25,000/-, instead of ₹6,000/- awarded by the Tribunal.

14. Accordingly, the compensation is recalculated as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transportation	2000
Funeral expenses	25000
Damage to clothings	1000
Loss of dependency	3725935 (31845.6 x12x 13 x 3/4)
Pain and suffering	10000
Loss of love and affection	200000
Loss of consortium	100000
Loss of estate	75000
Total	41,38,935 (Rupees forty one lakhs thirty eight thousand nine hundred thirty five only)

15. The amount will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less

the amount already deposited before the Tribunal, if any, within a period of three months from the date of receipt of a copy of this judgment. The appellants will share the amount in the ratio as already fixed by the Tribunal. Appellant No.1, the widow is permitted to withdraw the amount apportioned to her along with its interest and the share due to the minor appellants will be deposited in a nationalized bank till they attain majority.

The appeals are accordingly disposed of. The parties will suffer their costs in the appeals.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.