

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. 446 of 2013 ()

AGAINST THE AWARD IN OPMV 1589/2008 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM DATED 04-08-2012

APPELLANTS/CLAIMANTS:

1. ELSY AGED 54 YEARS
W/O.LATE K.A.SANDIAV @ UNNI
RESIDING AT H.NO.X/1566-A, KUMMINJAS PARAMBIL HOUSE
NEAR C.C.E.A HALL, SOUTH THAMARAPRAMBU, KOCHI-682 001.
2. SOUMYA SANDIAV @ PHILIOMINA SOUMYA, AGED 27 YEARS
D/O.LATE K.A.SANDIAV @ UNNI
RESIDING AT H.NO.X/1566-A, KUMMINJAS PARAMBIL HOUSE
NEAR C.C.E.A HALL, SOUTH THAMARAPRAMBU, KOCHI-682 001.
3. PHILOMINA @ AMMINI AGED 82 YEARS
W/O.LATE K.S.ANTONY, RESIDING AT H.NO.X/1566-A
KUMMINJAS PARAMBIL HOUSE, NEAR C.C.E.A HALL
SOUTH THAMARAPRAMBU, KOCHI-682 001.

BY ADVS.SRI.K.JANARDHANAN
SMT.P.C.JEEVA
SRI.K.J.MANU RAJ

RESPONDENT/3RD RESPONDENT:

ICIC LOMBARD MOTOR INSURANCE CO. LTD.
KANNAKERI ESTATE, 3RD FLOOR, SHANMUGHAM ROAD
MARINE DRIVE, KOCHI-31.

R. BY ADV. SRI.R.AJITH KUMAR VARMA (128/84)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.446 of 2013

Dated this the 1st day of April 2015

JUDGMENT

Ramachandran Nair , J.,

In this appeal by the appellants who were claimants before the Tribunal two aspects have been highlighted by the learned counsel for the appellant, while challenging the award. The First one is that the Tribunal went wrong in finding that the deceased has contributed to the accident by 30% and 2nd one is that the compensation awarded on different heads of claim are inadequate.

2. We heard the learned counsel on both sides.

3. The accident occurred on 29.5.2008 at 10.30 p.m while the deceased was walking from south to north through the eastern side of the Island Marar Road. The offending vehicle is a container lorry bearing Registration No. KL-7U 8820 which came from north to south through the above road. The case pleaded is that the driver of the lorry suddenly turned to left thereby the

hook of the lorry hooked on the shirt of the deceased and he fell down and the back wheel of the lorry ran over him. He died immediately.

4. He was working as an Executive at Sical Logistics Ltd. The claimants raised a claim for Rs.15 lakhs in total and the Tribunal awarded an amount of Rs. 12,03,824/- and by reducing 30% finally arrived at a quantum of compensation at Rs. 8,26,677/-. 9% interest was also fixed.

5. Both the learned counsels argued elaborately on the finding of contributory negligence. Learned counsel for the appellant submitted that when the final report shows that the driver has been indicted for negligence no other aspects could have been considered by the Tribunal, whereas the learned counsel for the Insurance Company submitted that the scene mahazar showed that the place of occurrence is 4.25 metres west from the eastern tar end of the road. It is also submitted by the learned counsel that the case pleaded by the appellants that the hook of the lorry got hooked on the shirt of the deceased was not at all accepted by the Tribunal also.

6. Finding in paragraph 8 will show that the Tribunal actually concluded that the accident occurred while the deceased was walking through the road itself and not through the side of the road.

7. Independent evidence if any as regards the accident is absent in the case. PWs.1 & 2 have been examined by the appellants to prove the salary and other details. In this context, learned counsel for the appellant pleaded that the appellants may be given one more opportunity to adduce oral evidence with regard to the cause of the accident. It is submitted that finding entered at present on contributory negligence will deprive the appellants of substantial amount of quantum.

8. Learned counsel for the respondent submitted that the deceased was aged 54 years and the Tribunal has spread over the multiplicand for the entire period of 11. It is also submitted that the said aspect also requires reconsideration. As far as claim towards funeral expenses, loss of love and affection, loss of estate etc. are concerned, learned counsel for the appellant relied upon various judgments of the Apex Court including decision of the Apex Court reported in Rajesh v. Rajbir Singh

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(2013 (3) KLT 89 (SC) to seek enhancement.

9. We are of the view that fresh opportunity can be granted to the appellants. We allow both sides to adduce evidence oral and documentary and to address arguments.

10. The parties will appear before the Tribunal on **18.5.2015**. All the aspects concerning the accident and the quantum of compensation are left open for consideration by the Tribunal. Every efforts will be taken to dispose of the matter within a period of four months from the date of appearance of the parties.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

**Sd/-
P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge