

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 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

MACA.No. 823 of 2011 ()

AGAINST THE AWARD IN OPMV 597/2005 of M.A.C.T., THALASSERY DATED 31-03-2011

APPELLANT(S)/PETITIONERS:

1. PADIMINI, 49 YEARS, W/O.DIVAKARAN,

2. T.DIVYA, 21 YEARS, D/O. DIVAKARAN,

3. T. DIPIN, 20 YEARS, S/O. DIVAKARAN,
ALL ARE RESIDING AT THONIYATH HOUSE
NEAR RAILWAY GATE, VALAPATTANAM, KANNUR DISTRICT.

BY ADV. SRI.P.M.PAREETH

RESPONDENT(S):RESPONDENTS

1. P.K. BALAKRISHNAN, S/O. KORAN,
36 YEARS, POOVATHIN KEEZHIL, MAVICHERRY
KUTTYERI, TALIPARAMBA-670141.

2. K.RATHEESH KUMAR, S/O. POCKAN,
KOOVAKKARAN VEEDU, PACHENI, THIRUVATTOOR-670141.

3. ORIENTAL INSURANCE CO.LTD.,
S.N.PARK ROAD, KANNUR-670001.

R,R-3 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.823 of 2011

Dated this the 25th day of February, 2015

JUDGMENT

Asha, J.

This appeal is filed by the legal heirs of the deceased Divakaran who met with an accident on 9.4.2004, admitted in hospital and thereafter died on 16.7.2004. The Tribunal dismissed the claim petition on the ground that the appellants were not in a position to prove that the death was caused on account of the motor vehicle accident. It was found that the F.I.R. was registered only on 17.12.2004.

2. The Tribunal disbelieved the case of the appellants as they failed to establish the alleged accident involving the vehicle bearing Reg. No.KL 13/J 8938 or to prove the negligence alleged against the second respondent.

3. We heard learned counsel appearing for the appellants, who submitted that the appellants had given statement before the Police immediately after the accident and it was on account of the inaction on

the part of the Police officials that the F.I.R. was not registered and the matter could not be pursued. We find that there is substance in the contention of the appellants that they could not pursue the matter before the Police at the relevant time, on account of the very serious nature of the injury sustained following the death of the husband of first appellant and father of appellants 2 and 3.

4. We heard learned counsel appearing for the insurance company also who pointed out that the Tribunal dismissed the claim petition since there was no evidence to prove the accident or the cause of the injuries or death of late Divakaran.

5. In the circumstances of the case, we are of the view that the appellants should be given a further opportunity to adduce evidence in the matter. Therefore, we remit the case to the Tribunal for fresh trial, after granting opportunity to the parties to adduce further evidence.

The parties shall appear before the Tribunal on 23.3.2015.

The appeal is disposed of as above. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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