

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

MACA.No. 927 of 2011 ()

AGAINST THE AWARD IN OPMV 1365/2007 of M.A.C.T OTTAPPALAM DATED
18-01-2011

APPELLANTS/PETITIONERS::

1. VEERASWAMY, S/O.DHARMALINGAM,
MUKUNDANALLUR, THORAVALLUR P.O., VRINDAVANAM TALUK
CUDALLUR DISTRICT.

2. RAJAVALLY, D/O.DHARMALINGAM,
MUKUNDANALLUR, THORAVALLUR P.O., VRINDAVANAM TALUK
CUDALLUR DISTRICT.

3. SUMATHY, D/O.DHARMALINGA, DO.

4. THAMILARASI, D/O.DHARMALINGAM, DO.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS/RESPONDENTS:

1. SATHAR, DRIVER, VALAPPAD POLICE
STATION, THRISSUR, PIN-680 512.

2. D.G.P., THIRUVANANTHAPURAM,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM
(OWNER OF KL-01-AA04526 JEEP), PIN-695 008.

3. PATTAYEE, W/O.DHARMALINGAM,
MUKUNDANALLUR, THORAVALLUR P.O., VRINDAVANAM TALUK
CUDALLUR DISTRICT, PIN-600 033.

4. KERALA STATE INSURANCE DEPARTMENT
THIRUVANANTHAPURAM, PIN-695 004.
(AMENDED AS PER ORDER IN IA NO.2953/09 DT.9/10/09.

R2 & 4 BY GOVERNMENT PLEADER SMT.P.A.RAZIYA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.No.927 OF 2011

Dated this the 21st day of August, 2015

JUDGMENT

Ramachandran Nair, J.

The son and daughters of deceased Dharmalingam are the appellants herein and his widow is impleaded as third respondent herein. They are aggrieved by the rejection of the application of compensation filed by them. The case of the appellants is that the accident occurred on 17.8.2006 at 9.30 a.m.. while the deceased was walking through the side of Thriprayar - Guruvayoor road. The offending vehicle is a Police jeep bearing Reg.No.KL 01 AA 4526 driven by the first respondent herein. It is the case of the appellants that since the Police jeep itself was involved, the case was later referred as motor occurrence. The deceased succumbed to the injuries on the same day and application under Section 163 A was filed claiming compensation. Before the Tribunal, appellants have examined PW1, grand daughter of the deceased who was also walking along with the

deceased at the time of the accident.

2. The learned counsel for the appellants submitted that the finding by the Tribunal that the Police jeep was not involved in the accident cannot be sustained. It is submitted that PW1 was an eye witness and even going by her evidence, the involvement of the Police jeep has been spoken to and the respondents have not adduced any contra evidence. It is submitted that the Police have changed the version of the case only to save the driver of the jeep and even going by the report of AMVI produced as Ext.A3, it can be seen that damage caused to the Police jeep has been recorded. The report is dated 18.8.2006, i.e. on the next day of the accident. The Police according to the learned counsel has proceeded as if the whole responsibility is on the rider of the motor cycle which is alleged to have initially hit the deceased. According to the learned counsel, he was thrown down and the Police jeep ran over his body which caused the death. Therefore, the responsibility of the Police driver cannot be said to be minimum.

3. In this context, the learned counsel relied upon the decision of a Division Bench of this Court in **National Insurance Co. Ltd. v.**

Sreelekha (2014 (1) KLT 253) to contend that the casual relationship between the use of the motor vehicle and the accident resulting death or permanent disablement is not required to be direct or proximate and it can be less immediate as well.

4. The learned Government Pleader submitted that the approach of the Tribunal is perfectly justified. The motor cycle hit the deceased and not the jeep.

5. The learned counsel for appellant relied upon the additional document produced along with I.A.No.2951/2015 . The same is the copy of the Malayala Manorama daily dated 18.8.2006 wherein a report is there with regard to the accident. Going by the report, he died after the Police jeep ran over him. The report states that the deceased Dharmalingam after he was hit by the bike fell down in front of the jeep and the jeep hit him and even though he was taken to the hospital, he died. It is submitted by the learned counsel for the appellants that the said report can be accepted in evidence in the light of the dictum laid down by a Division Bench of this Court in **Mathew Varghese & Ors. v. Kerala State Electricity Board (2014 (3) KLJ 374)**. Since it

is a newspaper report that immediately reported about the accident, it can be considered along with other evidence going by the dictum laid down therein. The evidence of PW1 is to the effect that she was walking along with the deceased on 17/8/2006 and the accident occurred before a petrol pump at Thriprayar. The deceased was hit by a bike and the jeep which was coming from behind hit him. He was taken to Valappad Hospital and then to the Medical College Hospital. According to her, it is due to the negligence of the driver of the jeep the accident occurred.

6. In the cross examination, she stated that her grand mother only knew Tamil and she is arrayed as respondent No.3. She again reiterated the stand that she saw the accident and the accident occurred while she was walking along with the grand parents together. It is also stated that the F.I. statement of the widow was recorded by the Police and she was asked to put the signature and what is stated in the statement that the deceased was hit by the motor cycle and then he fell down before the jeep is not correct. Actually the deceased was going through the eastern side of the road. The bike hit him initially and he

fell down and then the jeep which was coming behind it hit him again. It is stated by her that the version that the Police jeep did not hit him is not correct. It is also not correct to say that the bike hit the deceased and he fell down before the jeep.

7. We find from the AMVI 's report that the Police jeep was examined by the motor vehicle inspector on the next day of the accident. The damage stated in serial No.7 are :

- 1) Front left side indicator glass broken
- 2) Front left side indicator glass protector grill dented and damaged.

8. It will show that the said damage has been caused to the jeep also by the very same accident.

9. We had called for the postmortem certificate which has been made available by the learned Government Pleader. The postmortem certificate records the details of the injuries. They are the following :

- 1) Lacerated wound 5 x 1.5 cm.xbone deep over the left forehead, its lower end 5 cm. Outer to midline 3 cm. above eyebrow.

- 2.) Abrasion 3 x 1 cm. over the front of left shoulder
- 3) Abrasion 2.5 x 1 cm. over the back of right shoulder
- 4) Abrasion 0.5 x 0.3cm. over the back of left shoulder
- 5) Contusion 3 x 2.5 cm.xskin deep over the back of left shoulder.

Beneath injury number '1' the scalp showed contusion over an area 30 x 20 x 1 cm. The left temporalis muscle showed bruising involving its entire extent and depth. The anterior cranial fossa was fractured and fragmented into multiple pieces. A fissured fracture was seen extending upto the petrous part of temporal bone and squamous part for a length of 15 cm. The left frontal pole was lacerated (6 x 3 x 2 cm.). The brain showed thick film of subdural and subarachnoid bleeding.

10. He has suffered head injury and the opinion on the cause of death is noted as head injury. It is submitted by the learned counsel for

the appellant that on hitting by a bike alone such an injury could not have happened and herein it was the hit by the jeep alone which caused the head injury.

11. The written statement by the second respondent before the Tribunal takes the stand that while the deceased was walking as a pedestrian, the motor bike ridden by an unknown man hit the pedestrian near Thriprayar petrol pump and suddenly due to the hit the pedestrian fell down on the road in front of the jeep. The accident occurred on 9.30 a.m. on 17.8.2006 and it is a busy area also. Therefore according to the learned counsel for the appellants, there would not have been any difficulty to identify the motor cycle.

12. The learned Government Pleader submits that the Tribunal was right in relying upon the inquest report and other details. The investigation was done through the same police station. If at all their version is correct, we fail to find as to why any proper investigation was not done to find out the motor cycle which was plying close to the jeep itself. The statement in the final report Ext.A5 is that the case is closed as undetected. The narration of the details will show that after

the hit by the motor cycle, the deceased Dharmalingam fell before the jeep and the injury was caused evidently due to the hit by the jeep and thereafter he was taken to the Government Hospital, Valappad and then to the Medical College Hospital. Even if the motor cycle had hit him initially the involvement of the Police jeep is clear. The claimants can therefore seek relief against any of the tort feasers.

13. The question therefore will be whether there is acceptable evidence to prove the accident. According to us, the evidence of PW1 will show that the jeep is mainly involved in causing the injury. The report of the AMVI will show the damage caused to the jeep on its indicator glass also. The newspaper report which the appellant has produced before this Court as Annexure A1 is marked hereby as Ext.A7. Going by the decision of this Court in **Mathew Varghese & Ors. v. Kerala State Electricity Board (2014 (3) KLJ 374)**, it has got relevance. The view taken therein is as follows :

“ The news paper reports are not admissible
and are considered as hearsay evidence. However,

there are well known exception to hearsay evidence if a statement is contemporaneously made, which is known as res gestae, as embodied under Section 6 of the Evidence Act, 1872 (hereinafter referred to as the “Act”). Section 6 of the Act provides that the facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

14. This Court relied upon the judgment of the Apex Court in **Sukhar v. State of Uttar Pradesh [(1999) 9 SCC 507]** and the later decision in **Gentela Vijayavardhan Rao v. State of A.P. [(1996) 6 SCC 241]**.

15. Therefore, the said report also will indicate that the jeep is involved in the accident. If that be so, according to us, going by the decision of this Court in **National Insurance Co. Ltd. v. Sreelekha (2014 (1) KLT 253)** the casual connection alone is sufficient. Apart

from the same, this is an application under Section 163 A. Even going by the general principles where the doctrine of *res ipsa loquitur* could be made applicable, on that also the claimants could succeed in this case. We hold that the respondents 1 and 2 are liable and answerable for payment of compensation. The application being under Section 163 A, the amount specified in the schedule alone can be granted as compensation. The deceased was a rag picker collecting various waste articles and selling the same and appellant claimed a monthly income of ₹3,250/-. He was aged 60 at the time of the accident. Therefore, going by the schedule, even though the claim was ₹ 3,250/-, for awarding just compensation, we fix it at ₹3,300/- and therefore the loss of dependency will be ₹3,20,000/-. As per the schedule, ₹9,500/- will have to be granted for loss of consortium and funeral expenses. We award the same. Accordingly, the total compensation will be ₹3,29,500/-, out of which 1/3 will have to be deducted going by the schedule. Therefore, the balance amount will be ₹219666.66 which we round off to ₹ 2,20,000/-. Since the vehicle is covered by a valid policy with the fourth respondent, the fourth respondent is liable to

satisfy the award.

The appeal is allowed by granting a compensation of ₹ 2,20,000/- to the appellants herein along with the third respondent, widow of the deceased. The amount will carry interest @ 9% per annum from the date of filing of the application namely 22.12.2007.. Since the third respondent is a widow, we award 50% of the amount along with its interest to the third respondent and the balance amount with interest will be shared equally by appellants 1 to 4. We direct the fourth respondent to deposit the amount within a period of three months and the claimants are permitted to withdraw the amount. The court fee if any to be paid, can be realised by the Tribunal from the amount deposited. The parties will suffer their costs.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.