

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 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

MACA.No. 1332 of 2013 (B)

AGAINST THE AWARD IN OPMV 139/2009 of M.A.C.T OTTAPPALAM
DATED 26-04-2012

APPELLANT(S)/PETITIONERS IN O.P(MV):

1. VASU,AGED61 YEARS, S/O.NANU,

2. RAGINI, AGED 50 YEARS, W/O. VASU,

3. SURABHI, AGED 26 YEARS, D/O.VASU,

4. SUGANDHI, AGED 22 YEARS, D/O.VASU,
(ALL PETITIONERS ARE RESIDING AT PARAPPUMMAL HOUSE,
KOOTTANAD P.O., PATTITHARA VILLAGE, PATTAMBI VIA.
OTTAPALAM TALUK, PALAKKAD DISTRICT)

BY ADVS.SRI.K.C.SANTHOSHKUMAR
SMT.M.M.DEEPA

RESPONDENT(S)/RESPONDENTS IN O.P(MV):

1. G.PARAMASIVAM
AGE NOT KNOWN, S/O.GURUSWAMY, 5/9
MANGAIYAR ARASI SANTHU, BODINAYAKANUR, UTHAMAPALAYAM
TAMIL NADU 600013 (OWNER OF EICHER VAN TN-72-B-3834)

2. P.KAMARAJ
AGE NOT KNOWN, S/O.PANDI, 122
VALASADURAI ROAD BODINAYAKANUR (P.O) & (T.K), THENI
TAMIL NADU- 600 623 (DRIVER OF EICHER VAN TN-72-B-3834).

3. NATIONAL INSURANCE COMPANY LTD.
BODI BRANCH, BODINAYAKANUR
TAMIL NADU- 600 213 (INSURER OF EICHER VAN TN-72-B-3834).

4. MUTHAIYAN
AGE NOT KNOWN, S/O.SUBRAMANIYAN, 31
MARIAMMAN KOIL STREET, KADIRKAMAN
PONDICHERY - 600 101(OWNER OF MARUTI ZEN CAR-PY-IP-3223).

5. BASIL VARGHESE
AGE NOT KNOWN, S/O.VARGHESE, MANAYYATH
KUTTA, KANINADU P.O.
ERNAKULAM -682 310 (DRIVER OF MARUTI ZEN CAR-PY-IP-3223).

6. UNITED INDIA INSURANCE COMPANY LTD.
BRANCH OFFICE, WESTERN WING, AMBADI BUILDING
PONNANI, MALAPPURAM DISTRICT-676 121
(INSURER OF MARUTI ZEN CAR-PY-IP-3223).

R3 BY ADV. SMT.DEEPA GEORGE
R6 BY ADV. SRI.A.R.GEORGE
R4 BY ADV. SRI.R.NIKHIL
R BY SRI.JOHN JOSEPH VETIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 18-03-2015, ALONG WITH MACA. 2275/2013, CO. 8/2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

**M.A.C.A Nos.1332 & 2275 of 2013 and
Cross Objection No.8/2015 in
M.A.C.A No.1332/2013**

Dated this the 18th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals and cross objection arise from the award in O.P(MV) No.139/2009 on the files of the Motor Accident Claims Tribunal, Ottappalam. The claimants have come up in appeal in M.A.C.A No.1332 of 2013 and the 4th respondent before the Tribunal is the appellant in M.A.C.A No.2275/2013 and Cross Objection No.8/2015 in M.A.C.A No.1332/2013 is filed by the 5th respondent before the Tribunal.

2. The accident is one involving two vehicles and the owners and the drivers of both the vehicles as well as the Insurance Companies are in the party array before the Tribunal and before this Court.

3. The accident occurred on 04.10.2008 at about 11.30 p.m at Pollachi on Thrissur-Kodaikanal public road. The

claimants in O.P(MV) 139/2009 are the parents and the siblings of the deceased who was travelling in a Maruti Zen car bearing Registration No.PY IP 3223 driven by the 5th respondent before the Tribunal. The offending vehicle is a Van bearing Reg.No.TN 72B 3834 which was driven by the 2nd respondent before the Tribunal. The case pleaded by the claimants is that the Maruti Zen car was going behind the Van, and dashed against the backside of the Van when the driver stoppped it abruptly. The deceased sustained grievous injuries in his head and while he was being taken to the Government Hospital, Pollachi, succumbed to the injuries.

4. A crime was registered as Crime No.294/2008 at Pollachi West Police Station.

5. Before the Tribunal, respondents 1, 2 and 4 were declared exparte. We will refer to the array of parties as described in M.A.C.A No.1332/2013. Respondents 1, 2 and 3 respectively are the owner, driver and insurer of the Van bearing Reg.No.TN 72B 3834 and respondents 4, 5 and 6 are the owner, driver and the insurer of the Maruti Zen Car bearing Reg.No.PY IP 3223.

6. We heard M.A.C.A No.1332 of 2013 as the leading case. The same is filed by the parents and siblings of the deceased. The learned counsel for the appellants Sri Santhosh Kumar submitted that the Tribunal went wrong in entering a finding that the negligence aspect will have to be apportioned as 60% on the 2nd respondent and 40% on the 5th respondent. It is submitted that the Police have registered a case as against the 2nd respondent in this appeal who was the driver of the Van and the same has been marked in evidence as Ext.A6. Ext.A1 is a copy of the F.I.R and Ext.A2 is the copy of scene mahazar. It is submitted that in the light of the decisions of this Court and the Apex Court, the Police charge proves prima facie negligence and in the absence of any contrary evidence to disbelieve the contents in the documents, the Tribunal could not have attributed negligence on the part of the 5th respondent.

7. As regards the quantum of compensation, the learned counsel for the appellants submitted that the deceased was aged 24 years at the time of the accident and he was working as a Sales Officer in a Jewellery shop earning Rs.6,000/- per mensem. The Tribunal only took 50% of the same and fixed the monthly

amount as Rs.3,000/- and the multiplier was fixed in tune with the age of the parents which cannot be justified in the light of the dictum laid down by the Apex Court in **Sarla Verma v. Delhi Transport Corporation** [2010(2) KLT 802]. It is therefore submitted that the quantum of compensation will have to be recomputed. It is also his case that deduction for personal expenses should have been 1/3rd. Further it is pointed out that towards loss of love and affection Rs.10,000/- and towards loss of estate and funeral expenses Rs.5,000/- each alone have been granted. The learned counsel further submitted that for pain and sufferings, no amount has been granted even though the death was on the same day.

8. M.A.C.A No.2275/2013 is filed by the owner of the car challenging that part of the award fixing 40% liability on the driver of the car and making the owner also liable to meet the liability, at least a part, towards payment of compensation. The learned counsel for the appellant Sri R.Nikhil contended that the Tribunal did not fully appreciate the case pleaded by the claimants and the evidence that is available from the police records. It is submitted that the description of the accident by

the claimants will show that while Maruti Zen car was proceeding, the offending vehicle overtook it and applied a brake suddenly while reaching the railway gate which was in the immediate vicinity. It is submitted that the Tribunal relied upon two judgments of this Court going by the discussion in para.10 namely **Prasanna v. Kerala State Road Transport Corporation** [2009 ACJ 2719; 2008 (4) KLT 953] and **Oriental Insurance Co. Ltd. v. Ponnamma** [2011(1) KLT SN 89;2011(1) KLT SN 89 (C.No.121)]. The learned counsel submitted that even though the dictum laid down therein is that in a case where the driver of the vehicle if applies brake suddenly without showing any signal which results in colliding with the vehicle which is coming from behind, no negligence can be attributed, but as far as this case is concerned, the learned counsel submitted that the mechanical application of the above dictum is unjustified because the description of the accident herein by the claimant is supported by the police charge and the F.I.S. Therefore it is submitted that there is absence of evidence on the part of the other respondents to disprove the occurrence and the allegation of negligence on the part of the driver of the Van. In

the light of the dictum laid down by this Court in **National Insurance Co. Ltd. v. Nirmala Balachandran** [2012 (1) KLT SN 132 (C.No.141)] that, the final report filed by the police in the absence of better evidence can be acted upon by a court to come to a conclusion on the question of negligence, the learned counsel submitted that negligence has to be found against the 2nd respondent. In this context he also relied upon a judgment of the Apex Court in **Meera Devi v. H.R.T.C** [2014(2) KLT Suppl. 77 (SC)].

9. The learned counsel for the Cross Objector in Cross Objection No.8/2015 in M.A.C.A No.1332/2013 also supported the above argument.

10. For the Insurance Company, the learned counsel Smt.Deepa George raised the following contentions. It is submitted that the Tribunal's view is clear going by paragraphs 10 and 12. It is a case clearly covered by the dictum laid down by the two judgments relied upon by the Tribunal. It is submitted further that the claimants had not adduced any evidence to support their case of negligence as against the driver of the Van. The learned counsel therefore submitted that merely

by assertion of the claimant and based on the support of the F.I.R or the charge, the finding rendered by the Tribunal cannot be said to be unjustified.

11. We have considered the rival submissions. The translated copy of the F.I.S shows that the statement of the driver of the car was recorded. According to him, on the crucial date he was driving the car and 3 other persons were there in the car from Trichur to go to Kodaikanal. When their car reached near Pollachi at about 11 ½ hours, a Van overtook the car at high speed and while they reached near railway gate, the said Eicher Van TN72-B-3834 which was proceeding in front of their car suddenly applied brake near speed check post. This caused the car to dash against the back side of the van. Ext.A1 is the F.I.R. We extract the relevant portion contained in the F.I statement of the driver of the car herein below:

“I am the 2nd year student of Nursing at Bapuji Hospital, Karnataka State. I have come down to my native place Kuttal after taking own leave. Yesterday myself, my uncle’s son Eldo, my friends Tulfikar, Surag were travelling in a Maruti Zen PY-01-P-3203 of my friend Tulfikar to go for a picnic. On 04-10-2008 night at 7 ½ hours I was driving the Car and other three persons were there from Trichur to

go to Kodaikanal. While our car reached near Pollachi at about 11 ½ hours, a van overtook our vehicle at high speed. While we reached near Railway Gate, an Eicher Van TN-72-B-3834 which was proceeding in front of our Vehicle suddenly applied brake near speed check post. Our vehicle which was coming behind that dashed on its back.”

The version therefore, going by these records, will show that the offending vehicle which was proceeding in front of the car suddenly applied the brake when they reached near Railway Gate without any signal. Ext.A6 is the charge sheet in the criminal case. The offences alleged are under Sections 279, 337, 338 and 304A I.P.C. We extract herein below the relevant portion in page 2:

“On 4.10.2008 at 23.40 Hrs. at Palghat road within the jurisdiction of Pollachi West p.s the marginally noted accused Kamaraj was driving TATA 709 Lorry bearing No.TN 72B 3834 from West towards eastern direction in a rash and negligent manner in overspeed, over took the car of the complainant suddenly applied the brakes of the lorry in front of the Railway gate without any sign and stopped the vehicles resulting in dashing with the Maruthi Gen bearing No.PY 01P 3223 which was proceeding towards the east behind and thereby caused damage to the two vehicles and thereby committed the offences.

In the course of the same transactions the accused

caused simple injuries to the witness Fasil Vargheese who was driving the Maruthi Gen PY 01 P 3223 on his left side head, left cheek, face and left hip and caused injuries to the witness Dhulbikar who was travelling in the car, on his left eye-brow, left stomach and thereby committed the offences.

In the course of the same transaction he caused grievous injuries to the witness Elthopaul who was travelling in the car on his Maxila, Zygomatic omatilling both nasal bones. Left fore-arm, arm, left eyelid and thereby the accused committed the offence.

Hence the accused Kamaraj committed the offences U/s. 279, 337(2) counts 338 and 304(A) IPC and they are liable to be punished.

These are the offences”.

12. The scene before and at the time of accident can therefore be easily understood and it is not a case where two vehicles were proceeding in the same direction, one behind the other for a long time, as emphasised by the learned counsel for the Insurance Company, where, in such a scenario if the vehicle moving in front if applies brake suddenly without giving signal, the driver of the vehicle coming from behind may not get sufficient time to apply brake and this may cause an accident. As far as this case is concerned, what we find is that the very

allegation raised in the application for compensation supported by the allegations in the F.I statement and the charge sheet is that the offending vehicle overtook the car and just in front of the railway gate they stopped the vehicle suddenly applying brake without giving any signal. It is clear that initially the car was in front of the offending vehicle, before the latter vehicle overtook the first one.

13. In the above background if we apply the dictum laid down by this Court in the two judgments relied upon by the Tribunal, it can be seen that those were cases where the vehicles were proceeding in the very same direction and while so the driver of the vehicle going in front applied sudden brake and it was alleged that it caused the accident. In the first of the cases namely **Prasanna v. K.S.R.T.C** (supra), this Court was of the view that going by the facts of the case, the accident occurred on account of the school bus following the K.S.R.T.C bus hitting it from behind. In that scenario this Court held that applying brake suddenly by the driver of K.S.R.T.C is the reason for the accident. This Court did not accept the allegation of negligence against the driver of the K.S.R.T.C on the finding that

application of brake suddenly is a reflex action and is not a premeditated thing done after giving indication or signal to the vehicle following it.

14. The same is the view taken in the subsequent judgment by another Division Bench of this Court in **Oriental Insurance Co. Ltd. v. Ponnamma** (supra). The facts therein are totally different. One bus named 'Asha' was going in front of a K.S.R.T.C bus. The allegation against the driver of the first bus, was that when he applied brake, the driver of the K.S.R.T.C also applied brake, and in that process, its back portion tilted and a mini bus coming from opposite direction hit on the rear side of K.S.R.T.C bus. Actually the K.S.R.T.C bus had not hit the bus 'Asha' going in its front. This court did not accept the plea of negligence against the driver of the bus 'Asha'. Herein the facts are different. Of course in the first of the decisions, this Court discarded the Police charge also. But in the light of the dictum laid down in the later decision **National Insurance Co. Ltd. v. Nirmala Balachandran** (supra) that, the final report filed by the Police, in the absence of better evidence, can be acted upon by the courts to come to an appropriate conclusion

on the question of negligence and at least, such final report filed must bring about a shift in the burden, the same can be safely applied in this case. The respondents have not adduced any contra evidence.

15. The evidence of the claimants is clear from the deposition of PW1. Even though he was not an eye witness to the accident, the case pleaded in the claim application was spoken to by him also. Hence coupled with the evidence of PW1, the Police charge Ext.A6 will be sufficient to prove negligence as against the driver of the Van.

16. The Tribunal without appreciating and analysing the factual position as revealed from the pleadings of the parties in the claim application, readily assumed that the dictum laid down by this Court in **Oriental Insurance Co. Ltd. v. Ponnamma** (supra) and **Prasanna v. K.S.R.T.C** (supra), can squarely apply to this case also. According to us the dictum laid down in the above cases cannot be applied mechanically going by the facts of this case.

17. Therefore the finding of the Tribunal that he negligence will have to be attributed in the ratio of 60:40

between the 2nd respondent and the 4th respondent and the liability will have to be shared by the respective owners in that ratio is unjustified and we vacate the same.

18. We are of the view that in the light of the Police charge whereby the 2nd respondent in M.A.C.A No.1332/2013 alone was the accused, the same will show prima facie negligence as against him. He did not appear and adduce any evidence before the Tribunal. There was no attempt by any other respondents also to adduce evidence before the Tribunal as against the contents of the Police charge. Therefore we will be justified in entering a finding that the negligence was on the part of the driver of the Van which caused the accident and therefore the 3rd respondent Insurance Company will be liable to satisfy the award, especially in the light of the decision in **National Insurance Co. v. Nirmala Balachandran** (supra) which we prefer to follow.

19. As regards the quantum of compensation, the following aspects are relevant. In the light of the employment claimed by the deceased, even though there is no direct evidence regarding the emoluments he was receiving at Rs.6,000/- per mensem, we adopt a

reasonable sum, ie. Rs.4,000/- for the purpose of computing compensation. The multiplier going by **Sarla Verma v. Delhi Transport Corporation** (supra) will be 18 as the age of the deceased was 24. The Tribunal went wrong in adopting the multiplier as 11 based on the age of the parents which goes against the dictum laid down therein and in later decisions.

20. The deduction for personal expenses, going by the **Sarla Verma** (supra), in this case will be 50% and we find that there is no reason to vary the same in spite of the vehement arguments raised by the learned counsel Shri Santhosh Kumar.

21. We therefore re-compute the compensation in the following manner. We award an amount of Rs.4,32,000/- (ie.Rs.4000X12X18X1/2) for dependency and for funeral expenses we award Rs.25,000/-. We also award Rs.1,00,000/- for loss of love and affection and for pain and suffering Rs.10,000/- even though the death was on the same day in the light of the fact that the deceased sustained very serious injuries. We award a further amount of Rs.25,000/- towards loss of estate and the amount of Rs.2,000/- awarded by the Tribunal under the head transportation expenses is confirmed. Thus the award of the Tribunal is modified as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded by the Tribunal</i>	<i>Amt.awarded by this Court</i>
1	Transportation expenses	Rs. 2,000.00	Rs. 2,000.00
2	Loss of dependency	Rs.1,98,000.00	Rs.4,32,000.00
3	Loss of love and affection	Rs. 10,000.00	Rs.1,00,000.00
4	Loss of estate	Rs. 5,000.00	Rs. 25,000.00
5	Funeral expenses	Rs. 5,000.00	Rs. 25,000.00
9	Pain and sufferings	Rs. nil	Rs. 10,000.00
	TOTAL	Rs 2,20,000.00	Rs.5,94,000.00

(Rupees Five lakhs ninety four
thousand only)

22. Thus, the appellants will be entitled to a total compensation of Rs.5,94,000/- (Rupees Five lakhs ninety four thousand only) and the enhanced amount will carry interest at the rate of 9% per annum from the date of petition. The 3rd respondent Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimants can withdraw the amount.

The apportionment of the compensation between the 1st and 2nd appellants in M.A.C.A No.1332 of 2013 will be at the same rate as shown in the award. We therefore allow M.A.C.A

Nos.1332 and 2275 of 2013 and C.O.8/2015 to the above extent and the 3rd respondent Insurance Company will be liable to satisfy the award. The amount deposited in M.A.C.A No.2275/2013 under Section 173 of the Motor Vehicles Act will be refunded to the appellant therein. The parties will bear their respective costs in these appeals and in the Cross Objection.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge