

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 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

MACA.No. 2124 of 2007 ()

AGAINST THE AWARD IN OPMV 801/2000 of MACT ALAPPUZHA DATED
18-08-2006

APPELLANT/3RD RESPONDENT:

UNITED INDIA INSURANCE CO.LTD.
REP. BY ITS ASST. MANAGER, REGIONAL OFFICE, SHARANYA
HOSPITAL ROAD, KOCHI-11.

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENTS/PETITIONERS 1 TO 5 & RES. 1,2 & 4 TO 7 RESPECTIVELY:

1. METTY JOSE, AGED ABOUT 36 YEARS
W/O. DECEASED JOSE JOSEPH, YOGIA VEEDU, MUHAMMA P.O.
ALAPPUZHA DIST., KERALA STATE.

2. JOE JOSE, AGED ABOUT 10 1/2 YEARS,
(MINOR), S/O. DECEASED JOSE JOSEPH, REP. BY
MOTHER METTY JOSE, -DO-

3. ALEX JOSE, AGED ABOUT 7 YEARS,
S/O. DECEASED JOSE JOSEPH, REP. BY MOTHER, METTY JOSE
-DO-

4. V.O.JOSEPH, AGED ABOUT 75 YEARS,
S/O. OOLAHANNAN, VALLIKKATTU VELACHERY HOUSE
KAVALAM NORTH P.O., ALAPPUZHA DIST.
(F/O. OF THE DECEASED JOSE JOSEPH).

5. THRESIAKUTTY JOSEPH, AGED ABOUT 67 YRS,
W/O. V.O.JOSEPH, (M/O OF THE DECEASED JOSE, JOSEPH)
-DO-

6. M.PERIYASWAMY, S/O. MOLA GOUNDER,
26/449 (1), EAST VANNAKKARA, PALAKKAD
KERALA STATE. (DELETED)

7. K.BALAKRISHNAN, S/O. KALIYAPERUMAL,
2/68, MIDDLE STREET, PANAMADAL P.O.
ATTUR TALUK, SALEM DIST., TAMIL NADU.

8. THE GENERAL MANAGER,
DEPT. OF TELECOMMUNICATIONS, TELECOM DIST., ALAPPUZHA
KERALA STATE.

9. K.BINDU, W/O. LATE SOMAN T.,
PAZHEKATTU VELI HOUSE, PATHIRAPPALLY P.O.
MARARIKULAM SOUTH GRAMA PANCHAYATH, WARD NO.10.

10. ANOOP S., AGED ABOUT 13 YEARS,
S/O. LATE SOMAN, REP. BY HIS MOTHER K.BINDU, -DO-

11. BALAKRISHNAN S., AGED ABOUT 7 1/2 YRS,
(MINOR), S/O. LATE SOMAN, REP. BY HIS MOTHER
K.BINDU, -DO-

* RESPONDENT NO. 6 IS DELETED FROM THE PARTY ARRAY AT
THE RISK OF THE PETITIONER/APPELLANT VIDE ORDER DATED 30.6.2014 IN
I.A.NO.1774/2014

R1 TO 5 BY ADV. SRI.A.T.ANILKUMAR
R8 BY ADV. SRI.K.M.JAMALUDHEEN
R9 BY ADV. SRI.N.K.MOHANLAL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 07-08-2015, ALONG WITH MACA NO.2230/2007, MACA. 2320/2007,
MACA. 2352/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.Nos.2124, 2230, 2320, 2352 of 2007

Dated this the 7th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals have been filed by the Insurance Company, which was found liable by the Tribunal and by the claimants. M.A.C.A.No.2230/2007 is filed by the claimants and other appeals are filed by the Insurance Company.

2. The accident is one involving two vehicles; one a Tata sumo and the other a tanker lorry. The accident occurred on 6.4.2000. The deceased Jose Joseph was travelling in the Tata Sumo having Reg.No.KL-4-F/3250 driven by one Soman through Alappuzha-Kollam National Highway 47. They were coming from south to north. At a place called Punnapra, a tanker lorry bearing Reg.No.KL-9-A/9059 driven by the second respondent before the Tribunal hit the Tata Sumo. Both Jose Joseph and Soman sustained very severe injuries and they did not survive.

3. O.P.(MV)No.801/2000 was filed by the wife and children of deceased Jose Joseph claiming an amount of ₹96 lakhs. O.P.(MV) No.869/2000 was filed by the wife and children of deceased Soman claiming compensation to the tune of ₹ 20 lakhs. The Tata sumo belonged to the Department of Telecommunication and the General Manager of the Department of Telecommunication filed O.P.(MV) NO.1322/2010 claiming compensation for the damage caused to the vehicle and the claim therein was for a total amount of ₹ 3,49,743/-.

4. The Tribunal after taking elaborate evidence in the matter found that the driver of the tanker lorry was negligent in causing the accident and awards were passed consequently.

5. The learned counsel for the Insurance Company Sri.P.V.Jyothi Prasad submitted that the finding by the Tribunal that the driver of the tanker lorry was negligent is really unsupportable. According to the learned counsel it is a case of head on collision and therefore, the Tribunal ought to have rendered a finding that it was due to the composite negligence of both the drivers the accident occurred

and therefore the liability ought to have been apportioned between the owners of two vehicles. It is submitted that the driver of the lorry was examined as RW3. But his evidence was wrongly rejected by the Tribunal. The learned counsel further submits that the decision of the Apex Court in **Bijoy Kumar Dugar v. Bidhadhar Dutta & Others (AIR 2006 SCC 1255)** will apply to the facts of this case. Therein, the Apex Court has held that in a case of head on collision, drivers of both vehicles should be held responsible.

6. The learned counsel for the owner of Tata Sumo Sri.K.M.Jamaludheen and the learned counsel for the appellants in M.A.C.A.No.2230/2007 Sri.A.T.Anil Kumar contended that the driver of the offending lorry was charged by the Police and the charge sheet has been produced in evidence as Ext.A5. It is also submitted that the Tribunal below has gone into the contents of the scene mahazar which also will show that the lorry was on the wrong side.

7. First we will come to the details discussed by the Tribunal. It is seen from the discussion in paragraph 10 on issue No.1 that all the

aspects were considered by the Tribunal. Before the Tribunal, respondents 1 and 2 were ex parte. The Insurance Company had raised a contention in the written statement that the driver of the Tata sumo was also negligent. Ext.A1 is the copy of the FIR. Ext.A2 is the copy of the scene mahazar. Exts.A3 and A4 are the copies of AMVI reports of the two vehicles. Ext.A5 is the copy of the charge sheet in Crime NO.55/2000 of Punnapra police station. PW1, the widow of deceased Jose Joseph was examined and the second respondent, driver of the lorry was examined as RW3. The evidence of RW3 has been discussed by the Tribunal and according to him, the accident was caused due to the negligence of the deceased driver of the Tata sumo. The version by RW3 that the Tata sumo was driven in a rash and negligent manner was not believed by the Tribunal. The version given by RW3 is that on seeing the Tata sumo, he applied the brake after turning a little towards left and then the Tata sumo hit the lorry. The scene mahazar will show that the accident spot is in the national highway itself. The tarred portion of the road had 7 metres width. The lorry was going from north

to south and the Tata sumo was coming from south to north. The spot of accident going by the scene mahazar is 2 metre 25 cms. towards east from the western tarred end. The road was lying straight to a distance of 100 metres. It is clear that the lorry had crossed the middle line towards wrong side and the Tata sumo was coming from the right side itself.

8. What is argued by the learned counsel for the Insurance Company is that the lorry had also been damaged which will show that the Tata sumo had gone under the lorry. In the light of the fact that the police charge is against the driver and the scene mahazar also shows that the lorry was on the wrong side, the interested version of the lorry driver alone cannot help the appellant. He did not file any written statement also. The appellant did not adduce any other independent evidence also. In this context, we will refer to the decision of a Division Bench of this Court in *New India Assurance Co.Ltd. v. Pazhaniammal* (2011 (3) KLT 648). It has been held therein that production of police charge sheet is prima facie sufficient evidence of

negligence against the driver. It was also held that if any one of the parties do not accept such charge sheet, the burden must be on such party to adduce oral evidence. Herein, even though RW3 was examined, his evidence was rightly not accepted by the Tribunal and we find no reason to disagree with the above finding. Therefore, we confirm the finding that the driver of the lorry was negligent in causing the accident.

9. The learned counsel for the Department of Telecommunication submitted that from the very same accident, there was another case namely O.P.(MV)No.2238/2012, which was disposed of by the Motor Accidents Claims Tribunal, Ernakulam, wherein one T.R. Shaji was the applicant. He was also a traveller in the Tata sumo. He was awarded a total amount of ₹49,000/- by the Tribunal. Therein also, as regards the aspect of negligence, the Tribunal found that the accident occurred solely on account of the rash and negligent driving of the tanker lorry by the first respondent driver. It is submitted by the learned counsel for the claimants that no appeal was filed by the

Insurance Company against the said finding. This aspect also will go against the contentions of the appellant/ Insurance Company.

10. Now we will come to M.A.C.A.No.2230/2007. Therein, the claimants are the widow, two minor children and parents of deceased Sri.Jose Joseph. The evidence is to the effect that deceased Jose Joseph was working as the Deputy General Manager of the Department of Telecommunication and was drawing ₹17,882/- per month as salary. He was an ITA holder in 1988 batch. The claimants adduced evidence to show the future prospects of the deceased. The evidence in this regard has been discussed by the Tribunal in paragraph 12. After referring to the various decisions of the Apex Court and this Court, the Tribunal evolved a formula to balance various aspects. The learned counsel for the appellant/Insurance Company submits that the first respondent widow has been appointed later by the Department under compassionate employment scheme. But it is well settled that the same cannot be a factor to deny compensation and it cannot be reckoned as a benefit arising out of the accident so as to deprive the widow of the

legitimate compensation and therefore we reject the said contention. This is the view taken by the Tribunal also based on the judgment of this Court in **Geetha Kumari v. Rubber Board (1994 (1) KLJ 549)**. The evidence is to the effect that he was the Deputy General Manager at the time of the accident in the Department. Exts.A11 to A16 show his qualification and service details. He had degree in the branch with first class. PW2 who was the General Manager, BSNL was also examined to prove the avenues of promotion for the deceased. PW3 to 5 are also other officers of the Department. To show that there will be promotions during his career and consequent increase in salary, Exts.A23 and A24 showing the increase in salary of two colleagues have been proved. After considering various aspects, the Tribunal fixed the monthly income as ₹20,000/- and applied the multiplier of 17 and arrived at the figure of ₹40,80,000/- and 1/3 was deducted for personal expenses and finally granted an amount of ₹ 27,20,000/- as compensation for loss of dependency and ₹30,000/- on other heads was added to it.

11. The learned counsel for the appellants submits that the method adopted by the Tribunal cannot be said to be correct. According to the learned counsel, the law is now settled by the Apex Court in the judgment in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**. Going by the same, 50% of the salary income will have to be added for future prospects. In this case, the deceased was aged only 34 at the time of the accident. The learned counsel further submitted that the amount awarded towards loss of consortium and loss of love and affection also has to be enhanced in tune with the decision of the Apex Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)** and other subsequent judgments of the Supreme Court. It is also submitted that the Tribunal has not granted any amount towards loss of estate and the compensation granted for funeral expenses is only ₹3,000/-.

12. The learned counsel for the Insurance Company submits that he would have been an income tax payee and therefore income tax component has to be borne in mind while fixing the monthly income.

Even though the tax returns are not in evidence, it will be safe to deduct 10% towards income tax component. After deducting 10% towards income tax and adding 50% towards future prospects, the monthly income will ₹24140.7/-. The Tribunal has adopted the multiplier of 17, whereas going by the judgment in **Sarla Varma's** case (cited supra), it is 16. Since there are five claimants, 1/4 will have to be deducted towards personal expenses. There are two minor children and therefore towards loss of love and affection, we award a sum of ₹1,50,000/- and for loss of consortium, we award a sum of ₹1,00,000/-. For pain and suffering of the deceased, ₹10,000/- is granted and for funeral expenses, ₹25,000/- is granted. The deceased was having a very comfortable job and therefore we grant an amount of ₹100,000/- towards loss of estate in tune with the decisions of the Apex Court.

13. Accordingly, the total compensation is refixed as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	3476260.7 (24140.7 x 12 x 16 x 3/4)

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of love and affection	150000
Loss of consortium	100000
Pain and suffering	10000
Funeral expenses	25000
Transportation	2000
Loss of estate	100000
Total	3863260.7 Rounded off to ₹ 38,63,260 (Rupees thirty eight lakhs sixty three thousand two hundred sixty only)

14. The enhanced compensation will carry interest @ 9% per annum from the date of petition. Out of the total compensation, 50% of the compensation with interest is ear-marked to the first appellant and 20% with interest will be given to appellants 2 and 3 and the remaining 10% with interest will be shared by the parents, namely appellants 4 and 5. The amount earmarked for minor child will be deposited in a Nationalised Bank till he attains majority. The Insurance Company shall deposit the amount less the amount already deposited before the Tribunal within a period of three months and we permit the other

appellants to withdraw the same also.

In the light of the above, M.A.C.A.Nos.2320/2007 is allowed and M.A.C.A.Nos.2320/2007, 2352/2007 and 2124/2007 are dismissed. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.