

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 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

MACA.No. 2296 of 2007 ()

AGAINST THE AWARD IN OPMV 296/2004 of M.A.C.T OTTAPPALAM DATED
25-04-2007

APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LTD.
REP. BY THE ADMINISTRATIVE OFFICER, REGIONAL OFFICE
M.G.ROAD , KOCHI-11

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONERS 1 TO 4 & RESPONDENTS 1,2 & 3:

1. SAIDALI, AGED ABOUT 57 YEARS
F/O. DECEASED MUHAMMED ASHRAF, ALAKANDATHIL HOUSE
AMAYOOR PO, PATTAMBI, OTTAPALAM TALUK
PALAKKAD DIST.

2. MARIYA, AGED ABOUT 40 YEARS
M/O. DECEASED MUHAMMED ASHRAF, DO....DO...

3. KAMARU LAILA, AGED ABOUT 26 YEARS
S/O.DECEASED MUHAMMED ASHRAF, DO...DO...

4. MUHAMMED MUSTAFA, AGED ABOUT 21 YEARS
B/O.DECEASED MUHAMMED ASHRAF, DO...DO....

5. M.V.SREEDHARAN, AGED ABOUT 45 YEARS
S/O VELU, MOORKKOTH HOUSE
PAMPADI, THIRUVILWAMALA, THRISSUR DIST.

6. THE MANAGING PARTNER
MAYILVAHANAM COMPANY LTD SHORNUR.

7. ALAVI, AGED ABOUT 29 YEARS,
S/O. SAIDALI, ALAKANDATHIL HOUSE, AMAYOOR PO
PATTAMBI, OTTAPALAM TALUK, PALAKKAD DIST.

R1 TO 4 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R7 BY ADV. SRI.K.RAVI (PARIYARATH)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2296 OF 2007

Dated this the 22nd day of May, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal arises from the award in O.P.(MV)No.296/2004 of the Motor Accidents Claims Tribunal, Ottapalam and the Insurance Company is the appellant herein.

2. We heard the learned Senior Counsel for the Insurance Company Sri.Mathews Jacob, Sri.G.Sreekumar (Chelur) for respondents 1 to 4 and Sri.Ravi K. Pariyarath for the 7th respondent.

3. Learned Senior Counsel for the Insurance Company submitted that the finding rendered by the Tribunal regarding the negligence alleged against the driver of the offending vehicle is faulty. According to him, the motor cycle in which the deceased was travelling was coming from a side road and the bus was proceeding on its right side which is clear from the mahazer also.

4. The learned counsel for the respondents 1 to 4 submitted that the Tribunal has assessed all the materials correctly and there is no scope for interference also.

5. The accident occurred on 4.2.2004 at about 1 p.m. at Mele Pattambi on Ottapalam-Pattambi road. The spot of accident is near Pattambi-Cherupalchery road junction. Pattambi Police has registered Crime No.47/2004 as against the driver of the offending vehicle. The deceased was riding motor cycle from Maruthoor to Pattambi. Both the driver and the owner of the bus remained ex parte and they did not contest the allegation regarding the negligence on the part of the driver of the bus. The Tribunal after considering the scene mahazer, FIR etc. found negligence as against the driver of the bus.

6. We have also gone through the scene mahazer as well as the report of the Motor Vehicle Inspector, who had conducted inspection of the bus. Actually the accident spot is in the main road itself and not in the junction where the Cherupalchery - Pattambi road meets the main road. The Police had laid charge Ext.A4 in the criminal case registered

against the driver of the bus also. The road is having 8.80 metres in width and the spot of accident is 1.40 metres to north to the southern tarred end.

7. The legal position is settled that when the Police has laid charge against the driver, it is sufficient to prove prima facie negligence. Here, there is no contra evidence and there is no appearance for the driver or the owner also. Therefore, we find no reason to interfere with the said finding.

8. As regards the quantum of compensation, the learned Senior Counsel submits that only 1/3 was reduced for personal expenses of the deceased. He was aged 21 at the time of the accident. The multiplier adopted by the Tribunal is 13, whereas going by the judgment in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**, it will be 18. The total compensation awarded by the Tribunal is only ₹3,42,000/-. We also find that for loss of love and affection, only ₹20,000/- is granted and for funeral expenses, ₹5,000/- alone is granted. Therefore we are of the view that the compensation

awarded is just and fair.

Accordingly, no interference is called for and the appeal is dismissed. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.