

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

MACA.No. 812 of 2009 ()

AGAINST THE AWARD IN OPMV 40/2004 of ADDL.MACT,ALAPPUZHA.

APPELLANTS/PETITIONERS.:

1. GIRI, AGED 62 YEARS,
S/O.VELAYUDHAN, CHIRAYIL VEEDU, WARD NO.VI
MARARIKULAM SOUTH PANCHAYATH, KALAVOOR P.O.

2. MEENA, AGED 54 YEARS,
W/O.GIRI, CHIRAYIL VEEDU, WARD NO.VI
MARARIKULAM SOUTH PANCHAYATH, KALAVOOR P.O.

3. BAIJU, AGED 36 YEARS,
S/O.GIRI, CHIRAYIL VEEDU, WARD NO.VI
MARARIKULAM SOUTH PANCHAYATH, KALAVOOR P.O.

BY ADVS.SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA

RESPONDENTS/RESPONDENTS.:

1. K.R.SETHURAMAN, S/O.KNR KARTHA,
KIZHAKKEKAYYOPPALLI VELI, PANAVALLY P.O., CHERTHALA.

2. THE UNITED INDIA INSURANCE COMPANY
LIMITED, CHERTHALA BRANCH.

R2 BY ADV. SRI.P.JACOB MATHEW
R1 BY ADV. SRI.B.S.SIVAJI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.812 OF 2009

Dated this the 8th day of January, 2015

JUDGMENT

Asha, J.

Appellants are the dependents of the deceased Shaiju who succumbed to the injuries in a motor vehicle accident which occurred on 3.5.2003, while he was riding in a motor cycle which collided with a Mahindra jeep. In the claim petition, the appellants impleaded only the owner of the motor cycle as well as the insurer of the motor cycle. The owner, driver and insurer of the Mahindra jeep were not impleaded in the claim petition. Even though the claim petition was filed under Section 163 A of the Motor Vehicles Act, the Tribunal considered it as a petition under Section 166 and awarded compensation. The Tribunal has also found that there was contributory negligence on the part of the rider of the motor cycle and attributed 50% of negligence on the driver of the van. Hence award was passed granting compensation to the tune of Rs.164,600/- only which is 50% of the compensation found

admissible to the appellants. The appellants were set at liberty to proceed against the driver, owner and insurer of the Mahindra jeep in separate proceedings. This appeal is filed seeking enhancement in compensation.

2. We heard the learned counsel appearing on either side.

3. The learned counsel for the appellant submitted that the Tribunal ought to have permitted the appellants to implead the owner, driver and insurer of the Mahindra Jeep before passing the award and attributing negligence on the respondents as well the driver of the Mahindra Jeep.

4. In view of the fact that the contributory negligence is attributed on the rider of the motor vehicle as well as the driver of the Mahindra Jeep, we find that the matter should be remitted to the Tribunal for fresh trial.

5. The appellants will be permitted to implead the driver, owner and insurer of the Mahindra Jeep involved in the accident. The appellants will also be permitted to move petition for amendment, if necessary. The parties shall be at liberty to adduce fresh evidence. In

case the amount covered by the award has already been disbursed, the same will be adjusted in the award to be passed.

The appeal is accordingly disposed of, remanding the matter to the Tribunal. The parties shall appear before the Tribunal on 18.02.2015.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.

