

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

MACA.No. 533 of 2010 ()

AGAINST THE AWARD IN OPMV 1264/2005 of M.A.C.T.,ERNAKULAM
DATED 02-07-2009

APPELLANT(S)/PETITIONERS:

1. K.SANTHAMMA, W/O.LATE SRI. RAMACHANDRAN
NAIR, SAICHITRA, ALUVA NORTH, ALUVA-3.

2. DR. K.R.SHAJIKUMAR @ SHAJI K.KUMAR,
S/O. LATE RAMACHANDRAN NAIR, SAICHITRA, ALUVA NORTH
ALUVA.

3. K.R. SHEEJAKUMARI @ SHEEJA MENON,
D/O. LATE RAMACHANDRAN NAIR, DO-DO-

BY ADVS.SRI.ASP.KURUP
SRI.SADCHITH.P.KURUP

RESPONDENT(S):RESPONDENTS

1. MR. K.J.CHACKO, KUNNUMPARAMBIL, ULLALA,
THALAYAZHAM POST, VAIKOM.

2. SRI SUNIL, S/O. DASAN,
THACHETHU HOUSE, UDAYAMPEROOR, TRIPUNITHURA.

3. THE NATIONAL INSURANCE CO. LTD.,
TRIPUNITHURA.

R,R3 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.533 of 2010

Dated this the 27th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

In an accident which occurred on 23.06.2004, the husband of the 1st appellant died. He was aged 65 years. It was claimed that he was working as Manager in a private company and was getting a monthly income of Rs.15,000/-.

2. The Tribunal rejected the application after finding that the negligence was on the part of the deceased and relied upon Exts.A2 and A6 - the Police charge as well as the scene mahazar. The learned counsel for the appellants submitted that the appellants could not adduce oral evidence of other witnesses and did not get an effective opportunity to explain various aspects of the scene mahazar also. The learned counsel for the Insurance Company submitted that the evidence so far adduced will show that the deceased was negligent and he opposed the plea for remand of the matter made by the learned counsel for the appellant.

3. One of the aspects pointed out by the learned counsel for the appellants is that the main petition itself contains a prayer for claim under Section 140 of the Motor Vehicles Act, 1988. It is seen that in the Police charge the deceased was held responsible. The view taken by the Tribunal is that in the scene mahazar also, the descriptions would show that the negligence was on the part of the deceased. Of course if the party wants to adduce evidence against the contents of the said documents, they will have to examine witnesses. The learned counsel for the appellants seeks an opportunity to adduce evidence. Therefore we are not pronouncing anything finally on the issue. We are of the view that since it is a case of death, one more opportunity can be granted to the appellants.

Accordingly we set aside the judgment and remand the matter back to the Tribunal. It is open to both sides to adduce evidence in the matter. It is upto the appellants to move the application for compensation under Section 140 of the M.V Act, which will be considered by the Tribunal expeditiously.

The parties will appear on 06.05.2015.

Sd/-

T.R.RAMACHANDRAN NAIR

Judge

Sd/-

P.VASHA

Judge

rtr/

/true copy/

P.S to Judge