

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

MACA.No. 1864 of 2011 ()

AGAINST THE AWARD IN OPMV 992/2004 of M.A.C.T.,PUNALUR DATED
04-04-2011

APPELLANTS/ADDITIONAL 3RD RESPONDENT:

1. SOMANATHAN, PROPRIETOR, SARATHY MOTORS
(NOW DIED), PALLIMUKKU, KOLLAM
2. RAJESH SOMANATHAN, MANAGING PARTNER
SARATHY MOTORS, PALLIMUKKU, KOLLAM

BY ADVS.SRI.BINU GEORGE
SMT.HEMALATHA

RESPONDENTS/CLAIMANTS & RESPONDENTS 1 AND 2:

1. CHANDRAN PILLAI, AGED 55 YEARS
ARYA BHAVAN, ANAKOTTOOR P.O.
NEDUVATHOOR VILLAGE
KOTTARAKKARA, KOLLAM DISTRICT 691 505
2. CHELLAMMA AMMA, AGED 72 YEARS
D/O KALYANI AMMA, NELLIVILAPUTHEN VEEDU
ANAKOTTOOR P.O., NEDUVATHOOR VILLAGE
KOTTARAKKARA, KOLLAM DISTRICT 691 505
3. CHELLAPPAN PILLAI, AGED 77 YEARS
NELLIVILAPUTHEN VEEDU
ANAKOTTOOR P.O., NEDUVATHOOR VILLAGE
KOTTARAKKARA, KOLLAM DISTRICT 691 505
(DELETED)

4. ARYA, AGED 19 YEARS
ARYA BHAVAN, ANAKOTTOOR P.O.
NEDUVATHOOR , KOTTARAKKARA, KOLLAM
DISTRICT 691 505
5. ATHULYA (MINOR), AGED 17 YEARS
ARYA BHAVAN, ANAKOTTOOR P.O.
NEDUVATHOOR, KOTTARAKKARA, KOLLAM
DISTRICT, REP. BY RESPONDENT, GUARDIAN
FATHER. PIN 691 505
6. THANKACHAN, PROPRIETOR
GENERAL AUTOMOBILES, PULAMON, KOTTARAKKARA
691 531
7. SUBHASH NARAYANAN, S/O SIVADASAN
PUTHUMANGALATHU VEEDUM PULLAMALA
ANAKOTTOOR, NEDUVATHOOR. PIN 691 506

* RESPONDENT NO.3 IS DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE APPELLANTS VIDE ORDER DATED 13.3.2013 IN
I.A.NO.706/2013.

R1,R2,R4,R5 BY ADV. SRI.ANCHAL C.VIJAYAN
R7 BY ADV. SRI.R.PREMCHAND
R6 BY ADV. SRI.SYAM J SAM

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1864 of 2011

Dated this the 5th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

Appellant No.2 is the proprietor of Sarathy Motors going by the submission made by the learned counsel for the appellants. His father Somanathan, who is shown as appellant No.1 is no more now and was impleaded as additional third respondent before the Tribunal. It appears that he died in the meanwhile. The claimants before the Tribunal are respondents 1 to 5. Sixth respondent herein is respondent No.1 therein. The seventh respondent is the second respondent therein.

2. We heard the learned counsel for the parties. The accident herein occurred on 10/06/2004 at about 6.45 p.m.. The deceased Vasantha Kumari was hit by a motor cycle while she was walking through Neduvathoor-Puthoor road and near the school junction at Anakottoor the accident occurred. The second respondent before the Tribunal was riding the motor cycle. She died on 11.06.2004 and the

claimants approached the Tribunal for getting compensation and the Tribunal below has passed an award fixing an amount of ₹505,000/- with interest @ 7.5% per annum from the date of petition and the third respondent was held liable to satisfy the award.

3. The learned counsel for the appellants submitted that the first respondent before the Tribunal namely the sixth respondent herein is actually the defacto owner of the motor cycle and the 7th respondent who was riding the motor cycle was an agent of the sixth respondent.

4. The learned counsel for the claimants Sri.Anchal C.Vijayan submitted that actually the original additional third respondent is the dealer of motor vehicles and the vehicle was not sold to anybody and the first respondent before the Tribunal was an agent of the additional third respondent at Kottarakkara and the vehicle was transported there for exhibition and during this time the accident occurred. According to the learned counsel, the liability is on the additional third respondent before the Tribunal and now for the appellant No.2 herein itself.

5. The learned counsel for the appellants raised a further

contention that before the Tribunal, the appellant did not get effective opportunity in adducing evidence. Our attention was invited to Annexure IV which will show the proceedings before the Tribunal. It appears that the additional third respondent was directed to file written statement on 5.7.2010. On 30.07.2010, for not filing of written statement, the additional third respondent was declared ex parte. On 26.10.2010, PW1 was examined and Exts.A1 to A7 were marked and for producing the legal heirship certificate and for further evidence, the case was adjourned to 21.12.2010. On that day, the Tribunal was not sitting and it was adjourned to 19.1.2011. On 19.1.2011, I.A.No.2001/2010 was allowed and the case was adjourned to 26.2.2011. On the said day, first respondent was examined and Ext.B1 was marked and the Tribunal adjourned the matter for hearing.

6. According to the learned counsel for the appellants, the posting of the matter for hearing was without giving opportunity for the original additional third respondent and appellant No.2 herein to adduce evidence. The contention raised by the learned counsel for the

claimants is that they should have asked for an opportunity to adduce evidence which was not done by them and therefore no indulgence is called for.

7. We have gone through the written statement of the deceased appellant No.1. The contention appears to be that 3rd respondent parted with the possession of the vehicle in favour of the first respondent before the Tribunal as per Invoice No. 04-05/000686. What is sought for is an opportunity by the appellants to adduce evidence in support of the above contention. Admittedly, the vehicle had not been insured with any Insurance Company. Even though going by the endorsement made by the Tribunal on the date on which it was posted for hearing there was no request on the part of the appellants to allow opportunity to adduce evidence, we find that in the particular facts and circumstances of the case, a further opportunity can be granted to the appellant No.2 for adducing evidence in the matter as regards the liability of the appellant No.2 to satisfy the award.

8. The learned counsel for the claimants then submitted that if

this court is inclined to remand the matter, atleast $\frac{1}{2}$ of the amount awarded along with interest may be directed to be deposited by the appellant No.2. Our attention was invited to the interim order passed by this Court in I.A.No.2990/2011 by the Division Bench on 12.04.2013. That was an application for stay of operation of the award. This Court dismissed the I.A. and directed the appellants to deposit the amount within a month's time. No amount is seen deposited pursuant to the direction issued by this Court. Therefore, the learned counsel for the claimants is well justified in submitting that atleast $\frac{1}{2}$ of the amount along with upto date interest has to be deposited before the Tribunal especially since the appellant No.2 is a dealer of the vehicle, as a condition for remanding the case for fresh consideration.

Therefore, we make it clear that the assessment of the amount of compensation by the Tribunal as of now will be provisional and further direct the appellant No.2 to deposit 50% of the amount awarded along with upto date interest at the rate fixed already. The claimants and appellant No.2 and other parties, if any, are given opportunity to

adduce evidence in the matter. The claimants can also reagitate their pleas including liability of any of the parties to satisfy the award and as regards the total compensation which can be awarded to them. The deposit as directed above will be made within two months from today and if the above condition is not satisfied, the present appeal will stand dismissed. The parties will appear before the Tribunal on 14.09.2015.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.