

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 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

MACA.No. 650 of 2010 ()

AGAINST THE AWARD IN OPMV 75/2003 of M.A.C.T., PALAKKAD DATED
21-02-2009

APPELLANTS/PETITIONERS:

1. R.KRISHNAMOORTHY, S/O RAMAN
RESIDING AT KOTTIPPARA, ELAPPULLY AMSOM, PALAKKAD
NOW RESIDING AT 19/39 MURIKKAVU, A.K.G.NAGAR
WEST YAKKARA, PALAKKAD.

2. SUJATHA KRISHNAMOORTHY, RESIDING AT
KOTTIPPARA, ELAPPULLY AMSOM, PALAKKAD NOW
RESIDING AT 19/39 MURIKKAVU, A.K.G.NAGAR, WEST
YAKKARA, PALAKKAD.

3. ADITI, D/O.LATE RAMKUMAR, RESIDING
AT KOTTILPARA, ELAPULLY AMSOM, PALAKKAD.

4. ADVAITA D/O. LATE RAMKUMAR (MINOR)
REP. BY GUARDIAN GRAND FATHER R.KRISHNAMOORTHY
SON OF RAMAN, AGED 70 YEARS, RETIRED SUGAR FACTORY
MANAGER, RESIDING AT KOTTILPARA, ELAPULLY AMSOM
PALAKKAD NOW RESIDING AT 19/39 MURIKKAVU
AKG NAGAR, WEST YAKKARA, PALAKKAD

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS/RESPONDENTS:

1. M/S. OWEN BROCKWAY (INDIA) LTD.
THONDAMANATHAM, VAZHUDAVOOR, (SO)
PONDICHERRY.

2. UNITD INDIA INSURANCE CO. LTD.,
46 JN STRET, PONDICHERRY.

R1 BY ADV. SRI.V.J.JOSEPH
R-R1 BY ADV. SMT.M.V.LIGI
R2 BY ADV. SRI.S.ARUN RAJ

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.650 OF 2010

Dated this the 3rd day of July, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants are four in number out of which appellants 1 and 2 are the parents of late Sri.Ramkumar and appellants 3 and 4 are his daughters,

2. The whole background of the case reveals an unfortunate incident wherein the deceased Ramkumar and his wife Smitha died in the very same accident. The accident occurred on 20.6.2000 at about 11.30 p.m. on Avinasi-Kovai road near Coimbatore. They were travelling in a Maruthi Esteem car bearing Reg.No.PY.01/L.5559 driven by late Sri.Ramkumar from Pondichery to Palakkad. It was contended before the Tribunal that the deceased had to apply brake suddenly when a dog crossed the road and as the brake was not functioning, the car went out the road and capsized. It was the

contention that the brake system failed since there was no proper maintenance.

3. In these premise the application for compensation was filed. O.P.(MV) No.74/2003 was filed by the appellants 2 and 3 claiming compensation on the death of their mother. The Tribunal passed a common award. As far as the present case is concerned, the Tribunal found that the negligence was on the part of the deceased Sri.Ramkumar and therefore the application was dismissed. The petition was filed under Section 166 of the Act.

4. We heard the learned counsel for the appellants Sri.P.R.Venkatesh and the learned counsel for the Insurance Company Sri.Arun Raj.

5. The car belonged to the employer of the deceased. It is submitted that the circumstances narrated by the appellants as to the cause leading to the accident were genuine and therefore the learned counsel submits that since the accident was due to mechanical defect, no part of negligence can be alleged as against the deceased. It is contended that the Tribunal should have assessed the compensation in

that manner.

6. The learned counsel for the Insurance Company submits that the documentary evidence goes against the contentions of the appellants. It is submitted that the vehicle was inspected by the Motor Vehicles Inspector and the report has been marked in evidence as Ext.A1. Therein it has been reported that he could not find any mechanical defect and the brake system was working. He was examined as PW1. According to him, the brake system was in order. Of course the argument raised by the learned counsel for the appellants is that the vehicle was totally damaged and therefore the running condition of the vehicle could not be assessed and brake system could not be tested and therefore not much importance need be attached to the report of the Motor Vehicle Inspector. We cannot agree. The contention being that the accident was due to the mechanical defect, evidently the burden is on the appellants to prove the same. The Tribunal or this Court cannot readily presume that there was a mechanical defect. No other evidence as to the cause of accident is available.

7. The evidence is also to the effect that they had started from Pondichery to reach Palakkad. Of course the circumstances of the accident were tragic and both the parents have lost their son and daughter-in law and as far as the appellants 3 and 4 are concerned they lost the parents.

8. In the connected appeal M.A.C.A.No.561/2010, the matter was settled through Adalath and the total compensation awarded is Rs.70,000/- along with interest @ 7% per annum.

9. Since the evidence is lacking, we fully agree with the view of the Tribunal that the accident was not caused due to any mechanical defect. But at the same time, the appellants will be entitled for compensation on the principle of no fault liability under Section 140 of the Motor Vehicles Act. Going by the same, in the case of death, the compensation payable will be Rs.50,000/-. Therefore, we fix the total compensation at Rs.50,000/-. The appellants will also be entitled to interest @ 9% per annum from the date of petition. The amount will be shared equally by appellants 3 and 4.

The appeal is allowed to that extent. The parties will bear their costs in the appeal.

T.R. RAMACHANDRAN NAIR, JUDGE

K.P. JYOTHINDRANATH,, JUDGE

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