

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

MACA.No. 99 of 2008

AGAINST THE AWARD IN OPMV 564/2004 of THE MOTOR ACCIDENTS CLAIMS
TRIBUNAL, PALA DATED 28-02-2007

APPELLANTS/PETITIONERS:

1. ELSAMMA PIOUS, W/O.LATE PIOUS SEBASTIAN,
ROYAL HOUSE, KERALA ESTATE KARA, KERALA VILLAGE
NOW RESIDING AT VALLANATTU HOUSE, VALLICHIRA VILLAGE
PALAI.
2. PRINCY PIOUS, D/O.LATE PIOUS SEBASTIAN,
ROYAL HOUSE, KERALA ESTATE KARA, KERALA VILLAGE
NOW RESIDING AT VALLANATTU HOUSE, VALLICHIRA, VILLAGE
PALAI.
3. ELEZABETH PIOUS,D/O.LATE PIOUS SEBASTIAN
ROYAL HOUSE, KERALA ESTATE KARA, KERALA VILLAGE
NOW RESIDING AT VALLANATTU HOUSE, VALLICHIRA VILLAGE
PALAI. MINOR REPRESENTED MOTHER & GUARDIAN
ELSAMMA PIOUS.

BY ADVS.SMT.A.K.RANI
SRI.SHIJU VARGHEESE

RESPONDENTS/RESPONDENTS::

1. MURUKAN, S/O. NATARAJA CHETTIYAR,
KAUNDAR CHAVADY, MADHUKKARA, COIMBATORE
TAMILNADU STATE.
2. BALADANDAPANI,
13/163, CHANDRAPURAM, WALAYAR
PALAKKAD DISTRICT.
3. THE MANAGER,
NEW INDIA ASSURANCE CO. LTD., M.A.LANE, T.S. ROAD
PALAKKAD.

R3 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**
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M.A.C.A. No. 99 OF 2008
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Dated this the 16th day of September, 2015

JUDGMENT

P.N. Ravindran, J.

The appellants are the claimants in O.P.(MV) No. 564 of 2004 on the file of the Motor Accidents Claims Tribunal, Palai. They are, the wife and children of late Pious Sebastian, who succumbed to the injuries sustained by him in a motor accident took place at 3.30 a.m. on 11.03.2004. The appellants contended that the motor accident in which late Pious Sebastian sustained fatal injuries occurred on account of the rash and negligent driving of a lorry, owned by the second respondent and insured by the third respondent, by its driver, the first respondent. Though notice was served on respondents 1 and 2 namely the driver and owner of the lorry, they did not enter appearance before the Tribunal with the result they were set ex parte. The third respondent, the insurer of the lorry, entered appearance and filed a written statement dated 30.08.2006. In paragraph 2 thereof, the third respondent contended as follows:

" 2. That the vehicle bearing No.KL 11/3429 was

insured with this respondent in the name of Baladhandapani 13/163, Chandrapuram, Walayar, Palakkad (Dist) for the period from 21/08/2003 to 20/08/2004. This respondent reserves the right to raise all defences against the Petitioner. The alleged accident was due to the sole negligence of the deceased. He was driving the Jeep bearing No. KL 10/E 3318 from south to north direction in a most rash and negligent manner and went and hit on the lorry bearing No. KL. 11/3429 came from the opposite direction. The alleged police charge sheet is not on a fair investigation. The police charge sheeted the lorry driver in order to avail the 3rd party insurance benefits of the lorry to the legal heirs of the deceased/Jeep driver. The petitioners are entitled only for the statutory amount of compensation payable under Sec.140 of the M.V. Act. They are not entitled to claim under Sec.166 of the M.V.Act."

It also contended that the compensation claimed is excessive and exorbitant. In paragraph 7 of the written statement, it was contended that the alleged accident was due to the sole negligence of the deceased and there was no negligence on the part of the first respondent as alleged in the claim petition.

2. Before the Motor Accidents Claims Tribunal, no oral evidence was adduced on both sides. However, on the side of the claimants,

Exts. A1 to A9 were produced and marked. The Motor Accidents Claims Tribunal considered the rival contentions and held relying on Ext.A2 scene mahazar that the drivers of both the motor vehicles were responsible for the accident. The Tribunal held that there was 25% contributory negligence on the part of the victim of the accident, since he had driven the vehicle on the wrong side of the road. In that view of the matter, the Tribunal deducted 25% of the sum of Rs.3,05,000/- determined by it as the compensation payable under the various heads and directed the third respondent insurer to deposit the balance sum of Rs.2,28,750/- with interest at the rate of 7.5% per annum from the date of petition and proportionate costs quantified at Rs.9300/-, within one month from the date of the award. The claimants have, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

3. We heard Shri Shiju Varghese, learned counsel appearing for the appellants and Mr. Rajan P. Kaliyath, learned counsel appearing for the third respondent. Notice to respondents 1 and 2, who are the owner and the driver respectively of the lorry involved in the accident was dispensed for the reason that the third respondent insurer does not dispute its liability to indemnify them and has not pleaded or proved breach of policy conditions. The Tribunal has in the impugned

award held that there was contributory negligence on the part of the victim of the accident relying on the statement in Ext.A2 scene mahazar that the accident took place 2.12 metres to the west of the eastern tarred end of the road, which at the place of the occurrence had a width of 9.3 metres. The Tribunal held relying on the aforesaid statement that the jeep driven by the victim of the accident was on the wrong side and, therefore, there was 25% contributory negligence on his part. The third respondent had no case in the written statement filed by it that the victim of the accident had driven the jeep on the wrong side of the road. After hearing the learned counsel appearing on both sides and after going through Ext.A2 scene mahazar, we are not persuaded to agree with the learned Tribunal that the scene mahazar would indicate that there was contributory negligence on the part of the victim of the accident. The relevant recital in Ext.A2 scene mahazar, which is relied on by the Tribunal to find that the victim of the accident was guilty of the contributory negligence, is as follows:

“ടി റോഡിന്റെ കിഴക്കുവശം ടാർ റോഡ് എന്റീൽനിന്നും 2മീറ്റർ 12c.m. നേരെ പടിഞ്ഞാറുമാറിയുമുള്ള താർ റോഡും പരിസരവുമാണ് സംഭവസ്ഥലം.”

The scene mahazar was prepared eight hours after the accident. It was not prepared on the basis of the information furnished by an eye witnesses to the occurrence. It does not show the location of the jeep.

It does not refer to the condition of the road. It however notices the fact that there were patches of blood and glass pieces on the road. The police had, after investigating the crime, registered Ext.A1 FIR and filed Ext.A6 charge sheet alleging that the first respondent in the claim petition had driven the lorry in a rash and negligent manner. The police records do not support the finding that there was contributory negligence on the part of the victim of the accident. As stated earlier, the third respondent insurer has no such case in the written statement filed by it. In short, there is no material on record to substantiate the finding entered by the Tribunal that the victim of the accident had contributed to the accident. We, therefore, vacate the finding entered by the Tribunal on issue No.1 framed by it that there was contributory negligence on the part of the victim of the accident.

4. The next question to be considered is whether the compensation awarded by the Tribunal is just and proper. The victim of the accident was aged 48 years. He had left behind his wife aged 45 years and two minor daughters aged 17 and 15 respectively on the date of the accident. Notwithstanding this fact, the Tribunal has awarded only the sum of Rs.15,000/- to the two daughters of the victim of the accident as compensation for loss of love and affection and a like sum to his wife as compensation for loss of consortium. In

the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh (2013(3)KLT 89(SC)]**, we are of the opinion that the first claimant, namely the wife of the victim of the accident, should be awarded a further sum of Rs.85,000/- as compensation for loss of consortium and that claimants 2 and 3, who are children of the victim of the accident, should be awarded a further sum of Rs.85,000/- as compensation for loss of love and affection/parental care.

5. The claimants had in the claim petition averred that the victim of the accident was running a hardware shop at Karuvarakundu in Malappuram District. They had also produced Exts.A7 and A8 certificates issued by the President and Secretary respectively of Karuvarakundu Grama Panchayat to prove that the deceased had obtained a licence under the provisions of the Kerala Panchayat Raj (Issue of Licence To Dangerous and Offensive Trades and Factories) Rules, 1996. It has also come out in evidence that the deceased was the owner of the jeep which he was himself driving and that he was maintaining a family consisting of his wife and two daughters. The Tribunal has however awarded compensation for loss of dependency taking his monthly income as only Rs. 2500/-. Having regard to the ground realities coupled with the facts stated above, we are of the opinion that on a modest estimate the monthly income of the victim of

the accident which took place in March 2004 can be taken as Rs.5000/-. As the victim of the accident was aged 48 years, the multiplier to be adopted is 13. Calculated on that basis, the compensation payable to the claimants under the head of loss of dependency would be $\text{Rs.}5000 \times 12 \times 13 \times 2/3 = 5,20,000/-$. The Motor Accidents Claims Tribunal has awarded only the sum of Rs.2,60,000/- as compensation under the head of loss of dependency. We accordingly award to the appellants/claimants a further sum of Rs.2,60,000/- as compensation under the head of loss of dependency.

6. The Tribunal has awarded only Rs.3,000/- as compensation for funeral expenses. In the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh**(*supra*), we award a further sum of Rs.22,000/- under that head. The Tribunal has not in the instant case awarded any amount as compensation under the head loss to the estate. Having regard to the fact that the victim of the accident was running a hardware shop and he also owned a jeep, we are of the opinion that the sum of Rs.10,000/- should have been awarded under that head. We accordingly award the sum of Rs.10,000/- as compensation under the head loss to the estate. The compensation awarded under the other heads does not in our opinion, call for any further enhancement.

We accordingly allow the appeal and award to the appellants/claimants a further sum of Rs.4,62,000/- (Rupees four lakh sixty two thousand only) as compensation over and above the compensation awarded by the Motor Accidents Claims Tribunal. The third respondent insurer shall deposit the said amount together with interest at 9% per annum from the date of claim petition till the date of deposit, within two months from the date of receipt of a copy of this judgment. Needless to say the appellants/claimants will also be entitled to be paid the sum of Rs.76,250/- which was deducted by the Tribunal from the compensation awarded by it on the ground that there was contributory negligence on the part of the victim of the accident together with interest at the rate awarded by the Tribunal. Upon such deposits being made, the amount shall be disbursed to the appellants in equal shares. No costs.

Sd/-

**P.N. RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

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P.S. (Hr.Gr.)To Judge

“ടി റോഡിന്റെ കിഴക്കുവശം ടാർ റോഡ് എന്തിൽനിന്നും 2മീറ്റർ 12c.m.
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സംഭവസ്ഥലം.”