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 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

MACA.No. 1108 of 2010 ( )

AGAINST THE AWARD IN OP(MV) 200/2003 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, THALASSERY DATED 20-02-2010

APPELLANT/PETITIONER:

NABEEL P.V., S/O. ABOOBACKER, AGED 20
PARITHIYOTTU VALAPPIL HOUSE, CHUTALA, P.O.C.POYIL
PARIYARAM AMSOM, THALIPARAMBA TALUK, REP. BY
POWER OF ATTORNEY HOLDER NAJEEB ABOOBACKER S/O. ABOOBACKER
RESIDING AT PARITHIYOTTU VALAPPIL HOUSE
CHUTALA, P.O.C.POYIL
PARIYARAM AMSOM, THALIPARAMBA TALUK

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENTS/RESPONDENTS:
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1. **THEJRAJ G. , S/O. GOVINDA MALLER**
   KRISHNA OIL MILL, EDAT.P.O., VI.PAYYANNUR
   KANNUR DISTRICT-670327.

2. **JAYARAJ.T.V. S/O. M.V.RAMAN, P.O.KONKOL,**
   PAYYANNUR-670337.

3. **THE BRANCH MANAGER, UNITED INDIA INSURANCE CO. LTD.,**
   KANNUR BRANCH, FASHION TOWER
   THALASSERY ROAD, KANNUR-670701.

R3 BY ADV. SRI. P. MURALEEDHARAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10-07-2015, ALONG WITH MACA. 1277/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SHG/

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

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M.A.C.A.Nos.1108 & 1277 of 2010

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Dated this the 10th day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

Both these appeals are respectively filed by the claimants in O.P.(M.V.) Nos.200/2003 and 204/2003 of the Motor Accidents Claims Tribunal, Thalassery.

2. In M.A.C.A.1108/2010 the claimant is the appellant and in MACA No.1277/2013 the claimants, who are the legal representatives of the deceased Sadarudheen, are the appellants.

3. Two questions arise for consideration in the appeals. First one is the finding regarding contributory negligence on the part of the appellant in MACA 1108/2010 and the second one is regarding the inadequacy of the compensation.

4. We heard the learned counsel for the appellants and the learned Counsel for the Insurance Company.

5. The appellant in MACA 1108/2010 was riding a

motorcycle and the deceased Sadarudheen was travelling as a pillion rider on 10.9.2002 at 1. p.m. They were coming through the National Highway from Pariyaram to Taliparamba, i.e. from north to south. The offending vehicle, a mini lorry bearing registration No.KL-13G-170 was going from south to north. The vehicles collied at a place called Kappanathattu near Kuppam.

6. In O.P.(M.V.)No.200/2003 Rs.2,80,000/- was claimed as compensation and in O.P.(M.V.)No.204/2003 Rs. 4 lakhs was claimed.

7. The learned counsel for the appellants submitted that the Tribunal has apportioned the contributory negligence at 80:20. 20% is alleged as against the appellant in MACA 1108/2010. It is submitted that the police have registered a crime and the final report was filed arraying the driver of the mini lorry as the accused. It is also submitted, by referring the discussion of the evidence, that the Tribunal entered into a finding adverse to the appellant in MACA 1108/2010 only based on one sentence

in his deposition that after the hitting by the lorry they were thrown away by about 2 mtrs.

8. We have gone through the evidence in the matter. The rider of the motorcycle has been examined as PW1. Exts.A1 to A3 are the records in crime No.609/2002. Ext.A2 is the scene mahazar and Ext.A3 is the copy of the Final Report. The road at the place of accident is having a width of 8 mtrs. and going by the entries in the scene mahazar the distance towards east from the place of occurrence is 3 mtrs. and the distance towards west from the place of occurrence is 5 mtrs. It is contended by the learned counsel for the appellant that the motorcycle had not crossed the mid line.

9. We find force in the above submissions. Apart from the same the Tribunal took the view as against the appellant in MACA 1108/2010, in spite of the final report by taking the view that the police charge as a whole cannot be relied on for finding negligence in a motor accident claim. This view cannot be accepted in the light of the

dictum laid down by this court in the decision reported in **New India Assurance Co. Ltd. v. Pazhaniammal [2011 (3) KLT 648]** wherein the Division Bench was of the view that prima facie, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the indictee. If any one of the parties do not accept such charge sheet, the burden must be on such party to adduce oral evidence. If oral evidence is adduced by any party, in a case where charge sheet is filed, the Tribunals should give further opportunity to others also to adduce oral evidence and in such a case the charge sheet will pale into insignificance and the dispute will have to be decided on the basis of the evidence.

10. In the light of the above and in the absence of any evidence on the part of the driver and owner of the offending vehicle, we accept Ext.A2 and find that the driver of the offending vehicle was negligent. Therefore, the finding that the appellant in MACA 1108/2010 has contributed to the accident at 20% cannot be sustained and

we vacate the same. We hold that the driver of the offending vehicle was negligent in causing the accident.

11. As regards the quantum of compensation it is seen from the evidence that the appellant in MACA 1108/2010 was treated as inpatient for a period of 63 days. He had sustained fracture of left femur as well as injury on chest which is supported Ext.A4 the wound certificate. He has produced Ext.A5 series the discharge cards and the period of inpatient treatment are the following 10.9.2002 to 2.11.2002 (53 days), 19.5.2005 to 25.5.2005 (seven days) and 14.12.2002 to 16.12.2002 (three days). The certificate Ext.A5 shows that initially complete bed rest for six weeks was advised after discharge. During that period implant was inserted which was removed at the time of second admission. The learned counsel submitted that the amount awarded towards pain and suffering, bystander's expenses and loss of income require modification.

12. Learned counsel for the Insurance Company supported the award.

13. In the light of the fact that he was laid up due to the injuries sustained in the accident even though the Tribunal has awarded loss of earning only for three months, we find proper to fix it for a period of five months which would have been normally required for completing the medical treatment and for recuperation. As regards pain and suffering since he had sustained a serious injury i.e. a fracture and he was subjected to different treatment procedures, we fix an amount of Rs.35,000/-. For expenses towards bystander, we grant it at the rate of Rs. 200/-per day for 63 days.

14. Accordingly we re-fix the compensation in the following manner:

Head of claim	Amount re-fixed in Rs.	
Bystander's expenses	63x200	12600
Medical expenses		13072
Pain and suffering		35000
Extra nourishment		4000
Loss of earnings	5x3000	15000
Transportation		3000
Loss of amenities		5000

Head of claim	Amount re-fixed in Rs.
Total	**87672** **Rounded off to 87,600** **(Rupees eighty seven thousand six hundred only)**

15. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

16. Insurance Company is found liable to satisfy the award and we direct the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellant will be entitled for the release of the amount.

17. As far as M.A.C.A.No.1277/2010 is concerned the deceased was aged 24 at the time of accident. In this case it was contended that he was earning Rs.5,000/- per month and a certificate was produced from a merchant who was examined as PW2. He is the managing partner of Shine

Glass Hardwares, Pazhayangadi. It was contended that the deceased was a partner and the said version was not accepted by the Tribunal. The Tribunal took the view that the documents produced are not sufficient and the evidence of PW2 does not inspire confidence also. We find no reason to vary this finding. But in the light of the fact that the appellants had claimed Rs.5,000/- alone it cannot be said to be exorbitant. We find it proper and fair to fix Rs.5,000/- as the monthly income for assessing the compensation.

18. He was a bachelor at the time of the accident and therefore 50% amount will have to be deducted for personal expenses. The Tribunal has adopted the multiplier only as 5 after taking the age of the parents. In the light of the decision reported in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)** the age of the deceased will have to be reckoned. We therefore fix the compensation in the following manner:

Head of claim	Amount re-fixed in Rs.
Loss of dependency	540000
Pain and suffering	10000
Funeral expenses	15000
Loss of love and affection	100000
Loss of estate	30000
Transportation	3000
Total	**6,98,000** **(Rupees six lakhs ninety eight thousand only)**

19. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

20. We hold that the Insurance Company will be liable to satisfy the award. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellants will be entitled for the release of the amount, in the same proposition as fixed by the Tribunal.

21. Since the claim is only at Rs.4 lakhs, the appellants will have to pay court fee for the amount awarded by this Court over and above the claim which will be recovered by the Tribunal once the amount is deposited by the Insurance Company.

The appeals are accordingly allowed. There will be no order as to costs in the appeal.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

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