

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

MACA.No. 1525 of 2009 ()

AGAINST THE AWARD IN OPMV 23/2003 of II ADDL. MACT, KOZHIKODE
DATED 27-01-2009

APPELLANT/4TH RESPONDENT:

THE NEW INDIA ASSURANCE CO. LTD.,
BRANCH OFFICE, POOTHERI BUILDING, FEROKE
KOZHIKODE.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

RESPONDENTS/PETITIONERS & RESPONDENTS 1 TO 3:

1. GEETHA, AGED 34 YEARS, W/O. LATE
SUNILKUMAR, KALOLI HOUSE, KURUVATTOR AMSOM
AND PARAMBIL DESOM, KOZHIKODE, KOZHIKODE DIST.
2. KARTHIYANI, AGED 71 YEARS,
W/O. JANARDHANAN NAIR, KALOLI HOUSE
KURUVATTOR AMSOM AND PARAMBIL DESOM, KOZHIKODE
KOZHIKODE DIST.
3. AKSHAY, AGED 10 YEARS,
S/O. LATE SUNIL KUMAR (MINOR), KALOLI HOUSE,
KURUVATTOR AMSOM AND PARAMBIL DESOM, KOZHIKODE
KOZHIKODE DIST.
4. ANUSHREE, D/O. LATE SUNIL KUMAR,
AGED 14 MONTHS (MINOR), KALOLI HOUSE
KURUVATTOR AMSOM AND PARAMBIL DESOM, KOZHIKODE
KOZHIKODE DIST.
5. GIRISH P., AGED 36 YEARS,
S/O. CHANDUKUTTY, PANDARAKANDY HOUSE, THOTTILPEEDIKA
CHEVARAMBALAM CHEVAYOOR AMSOM DESOM, KOZHIKODE.
6. UNITED INDIA INSURANCE CO. LTD.,
CITY BRANCH 1, RAMEEZ ARCADE, C.H. FLY
OVER JUNCTION, CHEROOTTY ROAD, CALICUT.
7. FIROSH THAYYIL, S/O ABOOBACKER THAYYIL THAYYIL HOUSE,
FEROKE, KOZHIKODE.

R1&2 BY ADV. SRI.C.C.ABRAHAM
ADV. SRI.SAJIKUMAR.K.K.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.1525 of 2009

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Dated this the 3rd day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the fourth respondent in O.P.(MV).No.23 of 2003 on the file of the II Additional Motor Accidents Claims Tribunal, Kozhikode. Respondents 1 to 4 are the claimants and respondents 5, 6 and 7 are respondents 1, 2 and 3 respectively therein. The claimants are the wife, mother and minor children respectively of late Sunil Kumar, a pillion rider on the scooter bearing registration No.KL-11M 8907 owned and driven by the fifth respondent herein and insured by the sixth respondent. At about 7.30 pm on 27.10.2002 the scooter on which the claimant was travelling collided with a Maruthi car bearing registration No.KL-13 B 628 owned by the seventh respondent and insured by the appellant herein. In that accident, Sunil Kumar sustained serious injuries and he died on the way to Medical College Hospital, Kozhikode. Respondents 1 to 4 thereupon filed O.P.(MV). No.23 of 2003 seeking compensation under various heads, joining the owner-cum-driver of the scooter and its insurer as respondents 1 and 2. He contended that the accident took place on account of the rash and negligent driving of the scooter by its owner, the fifth respondent

herein. Later, the claim petition was amended and respondents 6 and 7 herein were impleaded as respondents 3 and 4 in the claim petition. It was contended that there was composite negligence on the part of the drivers of both the vehicles and therefore, respondents 2 and 4 who are insurers of the two motor vehicles involved in the accident may be directed to pay the compensation in equal proportion.

2. The owner-cum-driver of the scooter entered appearance and filed a written statement denying rashness and negligence on his part. He contended that the accident took place on account of the rash and negligent driving by the driver of the motor car, who was later impleaded as the third respondent before the Tribunal. He contended that the scooter was covered by a valid policy of insurance issued by the second respondent before the Tribunal and if any amount is liable to be paid as compensation, the insurer is liable to pay the same. The insurer of the scooter entered appearance and filed a written statement contending that the amount of compensation claimed is exorbitant and excessive and the liability if any, is to be divided among the respondents. The third respondent, the owner of the motor car did not enter appearance. The appellant herein, the insurer of the motor car entered appearance and filed a written statement contending that the accident took place on account of the negligence and carelessness

of the driver of the scooter (the first respondent before the Motor Accidents Claims Tribunal). It was contended in paragraph 5 of the written statement filed by the fourth respondent as follows:

"5. The accident happened only due to the negligence and carelessness of the driver of the scooter bearing registration No. KL-11M 8907 which was driven in a rash and negligent manner and drunken mood. The scooter was insured with the second respondent - hence we are not necessary party to the case."

3. In paragraph 6 it was contended that since the alleged accident happened due to the negligence and drunken mood of the driver of the scooter on which the deceased was a pillion rider, the claimants are not entitled to get any amount from the fourth respondent towards compensation. It was also contended that the records reveal that the deceased died due to the negligence of the first respondent, the driver of the scooter. The appellant however admitted the fact that the motor car involved in the accident was covered by a valid policy of insurance on the relevant date.

4. The Motor Accidents Claims Tribunal considered the rival contentions and the evidence on record and held that the accident took place on account of the rash and negligent driving of the third respondent before the Tribunal. The Tribunal held with reference to Ext.A2 scene mahazar that the road had a width of 6.7 metres at the place where the accident took place, that the scooter was going from

west to east and the motor car was coming from east to west, that the accident took place 2.15 metres away from the northern end of the road, meaning thereby that the motor car was on the wrong side (it ought to have been driven along the southern half of the road) of the road. The Motor Accidents Claims Tribunal held that the accident would not have happened if the car had kept to its proper side. The Tribunal also held that there is no evidence before it to the effect that the driver of the scooter had contributed to the accident. The Tribunal thereafter proceeded to consider the claim for compensation on the merits and awarded a total sum of ₹3,35,800/- as compensation under the following heads:

Loss of dependency	₹3,12,800/-
Loss of consortium	10,000/-
Loss of love and affection	10,000/-
Funeral expenses	2,000/-
Transport to hospital	1,000/-

Total	₹3,35,800/-
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The appellant, the insurer of the motor car was directed to pay the said amount together with interest at 7% per annum from the date of petition till the date of realisation. The appellant has, aggrieved thereby, filed this appeal.

5. We heard Sri. Babu Joseph Kuruvathazha, learned counsel

appearing for the appellant. The learned counsel for the appellant contended that apart from the fact that the compensation awarded under the head loss of dependency is exorbitant and excessive, the finding entered by the Tribunal to the effect that the driver of the motor car insured by the appellant was negligent is erroneous and cannot be sustained in the light of the overwhelming evidence on record. We have considered the submissions made at the Bar by the learned counsel for the appellant. We have also gone through Ext.A1 FIR and the written statement filed by the appellant. Ext.A1 FIR discloses that a crime was registered against the driver of the Maruthi car. Ext.A1 FIR was registered based on the information given by Sukumaran, brother-in-law of the deceased. The complaint therein is about the rash and negligent driving by the driver of the motor car. There is no indication in the complaint that Girish who was driving the scooter had consumed alcohol. Such a case was put forward by the appellant in paragraph 5 and 6 of the written statement. Even in the written statement filed by the appellant, the appellant has not specifically pleaded that the driver of the scooter had consumed alcohol and had driven the scooter under the influence of alcohol. Its case is that the scooter was driven in a rash and negligent manner and drunken mood. It was further alleged that the accident took place on

account of the drunken mood of the driver. The driver of the scooter was subjected to medical examination immediately after the accident for the reason that he had sustained injuries as can be seen from the First Information Statement, which led to the registration of Ext.A1 FIR.

6. Though the learned counsel for the appellant made available to us a copy of the accident register-cum-wound certificate dated 27.10.2012 issued by the Medical Officer who had examined the driver of the scooter on 27.10.2012 and contended that said document discloses that he had driven the scooter under the influence of alcohol, we are not persuaded to accept the said submission. The only entry therein is to the effect that there was 'smell of alcohol'. The doctor has not certified therein that the injured was under the influence of alcohol. The accident took place at 7.30 pm. The driver of the scooter was examined at 7.45 pm. In such circumstances, as there is no convincing evidence before the Tribunal to show that the accident took place on account of the fact that the driver of the scooter had driven the scooter under the influence of alcohol in an inebriated mood, we are not persuaded to hold that the driver of the scooter was responsible for the accident, that too when there is clinching evidence before the Tribunal to show that the motor car had crossed over to the

wrong side of the road. We therefore find no good grounds to interfere with the finding entered by the Motor Accidents Claims Tribunal that the accident took place on account of the rash and negligent driving by the driver of the motor car insured by the appellant.

7. That take us to the question whether the compensation awarded under the different heads is exorbitant or excessive. The impugned award discloses that the deceased was working as a painter. He was aged 33 years. The Motor Accidents Claims Tribunal has taken his monthly income as ₹2,300/-. The deceased was married and had two minor children. In such circumstances, by no stretch of imagination can it be said that the multiplicand adopted by the Tribunal is exorbitant. We also notice that the Motor Accidents Claims Tribunal had awarded only ₹10,000/- as compensation under the head loss of consortium to the wife who was aged only 28 years at the time of the accident. Likewise, the two minor children have been awarded only ₹10,000/- towards loss of love and affection. In the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh** 2013 (3) KLT 89 (SC) the compensation awarded under the aforesaid heads would certainly have been enhanced if the claimants had filed an appeal in this court. In such circumstances, we are of the opinion that the

compensation awarded cannot be said to be exorbitant or excessive.

We accordingly hold that there is no merit in the instant appeal. The appeal fails and it is dismissed, with a direction to the appellant to deposit the amount awarded as compensation by the Motor Accidents Claims Tribunal within one month from today, if it has not already been deposited. No costs.

sd/-

**P.N.RAVINDRAN
JUDGE**

sd/-

**ANU SIVARAMAN
JUDGE**

kp/-

True copy

P.A.To Judge