IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

MACA.No. 479 of 2008 ( )

AGAINST THE AWARD IN OP(MV) 2610/2002 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR DATED 29-05-2007

APPELLANT/3RD RESPONDENT IN THE OP:

THE ORIENTAL INSURANCE CO. LTD.,
KODUNGALLUR, REPRESENTED BY THE AUTHORIZED SIGNATORY
THE ORIENTAL INSURANCE CO. LTD., REGIONAL OFFICE
METRO PALACE, ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.A.R.GEORGE

RESPONDENTS/CLAIMANTS & RESPONDENTS 1 & 2 IN THE OP:
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1. K.K.SUKUMARAN, S/O. KRISHNAN,
KOLLASSERY HOUSE, P.O.CHULOOR, VALAPPAD
THRISSUR.

2. DRAUPATHI, W/O. K.K.SUKUMARAN,
-DO- -DO-

3. K.S.SHEEJA, W/O. SUNIL,
-DO- -DO-

4. C.V.JANARDHANAN, S/O. VELAYUDHAN,
CHULLIPPARAMBIL HOUSE, P.O.ANTHIKKAD, THRISSUR.

5. K.S.SANTHOSH, S/O. K.N.SIVAN,
KARUMANNU PUTHENPURAKKAL HOUSE, PUNNAMPARAMBU
MEPPADAN DESOM, WADAKKANCHERRY, THEKKUMKARA
VILLAGE, THRISSUR.

R1-R3 BY ADVS. SRI.SURAJ.S
SRI.K.J.MANU RAJ

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 02-07-2015, ALONG WITH MACA. 481/2008 & MACA. 1041/2008, 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.479, 481 & 1041 of 2008

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Dated this the 2nd day of July, 2015

J U D G M E N T

K.P. Jyothindranath, J.

All these appeals are against the award dated 29.5.2007 in O.P.(M.V.) Nos.2610/2002 and 3925/2003 on the file of the Motor Accidents Claims Tribunal, Thrissur. M.A.C.A.No.481/2008 is filed by the Insurance Company who was respondent No.3 before the Tribunal challenging the award in O.P.(M.V.)No.3925/2003 which was a property claim. M.A.C.A. No.1041/2008 is filed by the claimants in O.P.(M.V.) No.2610/2002 whereas M.A.C.A. No.479/2008 is filed by the Insurance Company against the same award. The claimants challenged the quantum whereas the Insurance Company challenged the finding of the Tribunal regarding the negligence aspect.

2. The facts is as follows:

On 10.3.2002 at about 2.15 p.m. a motor vehicle accident occurred near Pola Theatre S.N. Puram. The vehicles involved is a motorbike and a bus bearing registration No.KL8/M 64. In the said accident fatal injuries are caused to the deceased Shinil. He was undergoing treatment at District Co-operative Hospital, Thrissur and while so he succumbed to the injuries on 27.5.2002. The claimants in O.P.(M.V.) No.2610/2002 filed the application stating that while the deceased Shinil was riding the motorbike through Kodungallur Chettuva N.H. road a bus came from the opposite side and hit against the motorbike. Alleging negligence on the side of the driver of the bus, the compensation claim filed. The Insurance Company contested the matter stating that no accident occurred as claimed by the petitioners. It is the case of the Insurance Company that at the earliest point of time, when the F.I. Statement was recorded by the Mathilakom Police, it was the case that the deceased was only a pillion rider on the motorcycle bearing registration No.KL8/K 3113. It is the case of the Insurance Company that one Biju was riding the motorbike and the deceased Shinil was a neighbour of the said Biju. It is also the case of the Insurance Company that the spot of incident is recorded by the police as 2 mtrs. towards east from the western tar end and it is also the case that the width of the road is 7.26 mtrs., which will indicate that the bike was on the wrong side, as the bus was proceeding from south to north. It is the case of the Insurance Company that said Biju was not having any licence to drive and as such negligence was on the side of the rider of the bike. As such, the deceased is not entitled for compensation as the accident occurred due to the negligence of the deceased itself.

3. O.P.(M.V.)No.3925/2003 is the claim petition for property damage caused to the vehicle. The total claim made therein is for Rs.14,797/-. The Tribunal awarded a sum of Rs.11,570/-. There also the stand of the Insurance Company is that the accident occurred due to the negligence of the deceased as such the claimants are not entitled for any compensation.

4. The first aspect to be considered is in respect of negligence. In this case the accident occurred on a national

highway. There is evidence to the effect in the scene mahazar that after the accident the motorbike was dragged for a distance of about 8 mtrs. by the bus. After a thorough investigation, police filed charge against the driver of the bus who is arrayed as second respondent in the claim petition. When a charge is filed against the driver of the bus, the burden will be shifted to the party against whom charge is filed to show that the negligence is not on their part. In this case, no evidence is adduced by the Insurance Company or the driver to show that the negligence is on the side of the deceased. Then going by the dictum laid down in **New India Assurance Co. Ltd. v. Pazhaniammal** [**2011 (3) KLT 648**] wherein it is held that prima facie, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the indictee. It is found that accident occurred due to the negligence of the driver of the bus.

5. The next aspect to be considered is regarding the quantum. M.A.C.A.No.1041/2008: in this case the deceased

is aged 26 years, who was a bachelor. The appellants are the parents and sister of the deceased. Ext.A10 is the secondary school leaving certificate of the deceased which will also show that the deceased was aged 26 years at the time of the incident. He was in the hospital in coma stage for about 78 days. It can be seen that he sustained very grievous injuries. The case of the appellants is that he was conducting a grocery shop. But no evidence produced to substantiate the said claim. But at the same time, it can be seen that he produced the passport before the Tribunal as well as the copy of the driving licence. The passport is marked as Ext.A11 and the driving licence is marked as Ext.A16. From the said documents two aspects can be seen; one is that he is licenced to drive light motor vehicles and he is a person who can even seek job abroad. Apart from these, he is the owner of the motorbike involved in the accident. Thus considering his status, educational qualifications and other attending circumstances, a monthly income of Rs.3,500/- can be considered for the assessment purpose. Accordingly, we re-fix the compensation in the following manner:

Head of claim	**Amount re-fixed in Rs.**	
Transportation expenses		6000
Extra nourishment		3500
Damage to clothings		1000
Medical expenses		195100
Bystander's expenses	78x200	15600
Funeral expenses		15000
Pain and suffering		60000
Loss of love and affection		100000
Loss of dependency	3500x12x1x17/2	357000
Loss of estate		35000
Total		**7,88,200**

6. The appellants 1 and 2 in M.A.C.A.No.1041/2007 are entitled for a total compensation of Rs.7,88,200/- (Rupees seven lakhs eighty eight thousand two hundred only) and the compensation shall be shared equally in between the appellants 1 & 2. Appellants 1 and 2 alone are the dependants.

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

Thus when the negligence is found on the driver of the bus and when we found that the Insurance Company is liable to pay compensation, M.A.C.A.Nos.479/2008 and 481/2008 fails. M.A.C.A.No.1041/2008 is allowed as stated above.

There will be a direction to the third respondent 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 deposit, the appellants 1 & 2 will be entitled for the release of the amount.

The appeal of claimants is accordingly allowed. Appeals of Insurance Company are dismissed. 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

shg/