

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

MACA.No. 1571 of 2010 ()

AGAINST THE AWARD IN OPMV 707/2005 of M.A.C.T., PALAKKAD
DATED 10-07-2009

APPELLANT/3RD RESPONDENT IN OPMV 707/05:

NATIONAL INSURANCE COMPANY LTD.
KANNUR BRANCH, REPRESENTED BY ITS MANAGER
REGIONAL OFFICE, OMANA BUILDING, M.G.ROAD,
ERNAKULAM.

BY ADV. SRI.LAL GEORGE

RESPONDENT(S)/CLAIMANTS 1-4 AND RES. 1 & 2 IN OPMV 707/05:

1. SANTHA, W/O.MANIKANDAN &
D/O.THANGAMMAL @ THANGAM, AGED 29 YEARS,
VALIYAKATTUPARAMBU, VALLIKKODE
PALAKKAD TALUK & DISTRICT.

2. OMANA, D/O.LATE THANGAMMAL @ THANGAM,
AGED 21 YEARS, RESIDING AT VALIYAKATTUPARAMBU
VALLIKKODE, PALAKKAD TALUK & DISTRICT.

3. SUBRAMANIAN, AGED 32 YEARS, S/O. LATE
THANGAMMAL @ THANGAM, RESIDING AT VALIYAKATTUPARAMBU
VALLIKKODE, PALAKKAD TALUK & DISTRICT.

4. MARUTHACHALAM, AGED 27 YEARS, S/O. LATE
THANGAMMAL @ THANGAM, RESIDING AT VALIYAKATTUPARAMBU
VALLIKKODE, PALAKKAD TALUK & DISTRICT.

*5. V.MUTHUSWAMY, S/O.VYYAVURI,
AGE NOT KNOWN, 33, HOSSUR MAIN ROAD,
BANGALORE, (OWNER OF THE LORRY KA-1/6657).(DELETED)

*6. SHANMUGHAN, AGED 29 YEARS,
S/O.MURUGAN, MADASWAMY KOVIL STREET, DARASWAPALAYAM
VIRUTHANGAI DISTRICT.
(DRIVER OF THE LORRY KA-1/D 6657).(DELETED)

(*Respondent No.5 & Respondent No.6 are deleted from the party
array at the risk of the appellant as per order dated 27.5.2013 on
I.A.1146/12 in MACA No.1571/2010)

R,R1-4 BY ADV. SRI.JACOB SEBASTIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

M.A.C.A No.1571 of 2010-D

Dated this the 9th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the Insurance Company aggrieved by the award passed by the Motor Accident Claims Tribunal allowing total compensation of `3,37,900/-.

2. We heard Shri Lal George appearing for the appellant and Shri Jacob Sebastian for respondents 1 to 4.

3. The deceased was aged 23 years and was a spinster. The claimants are brothers and sisters of the deceased who have attained majority. Therefore, it is pointed out that none of them can be the dependents of the deceased. It is submitted that the issue is covered in favour of the Insurance Company in the light of the decision of the Apex Court in **Manjuri Bera v. Oriental Insurance Company Ltd.** [2008(2) KLT 873(SC)].

4. The learned counsel for the respondents submitted that going by the judgment in **Manjuri Bera v. Oriental Insurance Company Ltd.** (supra), it is concluded that

compensation under Section 140 of the Motor Vehicles Act can be granted to the claimants.

5. We have gone through the above referred judgment of the Supreme Court. The Apex Court has considered the expression 'legal representative' under Section 2(11) of C.P.C and has finally concluded as follows in paragraphs 11 to 15:

“11. According to S.2(11) of C.P.C, “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e. Under S.2(1)(g).

12. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique* (AIR 1989 SC 1589) the definition contained in S.2(11) C.P.C. is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in *Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai & Anr.* (1987 (2) KLT SN 1 (C.No.1) Supreme Court = AIR 1987 Supreme Court 1690) a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

13. There are several factors which have to be

noted. The liability under S.140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and S.166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of S.140 of the Act does not cease because of absence of dependency.

14. S.165 of the Act also throws some light on the controversy. The explanation includes the liability under Ss.140 and 163-A.

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to S.140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from S.140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae."

It was held that even if the parties are not legal representatives, liability in terms of Section 140 does not cease because of absence of dependency.

In that view of the matter, the appeal is disposed of vacating the fixation of dependency compensation and other items, but we hold that the claimants are entitled for

compensation under Section 140 of the Motor Vehicles Act, namely ` 50,000/- (Rupees Fifty thousand only). Accordingly, the award is modified. The compensation will carry interest at the rate already specified by the Tribunal in the award.

Sd/-

T.R.RAMACHANDRAN NAIR

Judge

Sd/-

P.VASHA

Judge

rtr/

/true copy/

P.S to Judge