

**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 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937**

**MACA.No. 1718 of 2010 ( )**  
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**AGAINST THE AWARD IN OPMV 730/2005 of MACT ALAPPUZHA DATED 18-03-2010**

**APPELLANT(S)/PETITIONERS IN OPMV:**  
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- 1. VIJYAMMA, W/O. GOPALAKRISHNAN,  
MADURIVELI VELI, CMC 16, CHERTHALA.P.O.  
ALAPPUZHA-688524.**
- 2. JYOTHI, D/O. GOPALAKRISHNAN, PUTHENVELI,  
MARUTHOVATTAMP.O., CHERTHALA, ALAPPUZHA DISTRICT  
PIN-688545.**
- 3. SANTHOSH, S/O GOPALAKRISHNAN,  
MADHURAVELI VELI, CMC 16, CHERTHALA.P.O.  
ALAPPUZHA DISTRICT, PIN-688524.**
- 4. VIJESH, S/O. GOPALAKRISHNAN,  
MADHURAVELI VELI, CMC 16, CHERTHALA.P.O.  
ALAPPUZHA DISTRICT, PIN-688524.**

**BY ADVS.SRI.P.V.BABY  
SRI.A.N.SANTHOSH**

**RESPONDENT(S)/RESPONDENT IN OPMV:**  
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- 1. DINESAN, S/O. BHASKARAN, THEVARKATTU,  
CHERTHALA.P.O., ALAPPUZHA DISTRICT, PIN-688524.**
- 2. BEENA RAJAN, W/O. RAJAN,  
FAYAZ NAGAR, NEAR PRIVATE BUS STAND, VAIKOM  
KOTTAYAM DISTRICT, PIN-686141.**

**MACA.No. 1718 of 2010 ( )**

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**3. UNITED INDIA INSURANCE CO. LTD.,  
TRIPUNITHURA BRANCH, ERNAKULAM, REPRESENTED BY  
ITS BRANCH MANAGER, ALAPPUZHA-688001.**

**R3 BY SRLJOHN JOSEPH VETTIKKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**SMM**

**T.R.RAMACHĀNDRAN NAIR**

**&**

**P.V. ASHA, JJ.**

.....  
**M.A.C.A. No.1718 of 2010**  
.....

Dated this the 30<sup>th</sup> day of March, 2015.

**J U D G M E N T**

**T.R.Ramachandran Nair**

This appeal is filed by the widow and children of deceased, Gopalakrishnan, who died in a road accident occurred on 4-4-2004. It is a case where the Tribunal dismissed the claim petition on the ground that the claimants ought to have adduced further evidence to prove the negligence from the part of the driver of the offending vehicle. The Tribunal ignored the police charge and found that the appellants have not examined the witnesses cited in the police charge.

2. The learned Counsel for the appellants submitted that the police charge proves the prima facie negligence, going by the dictum laid down by the judgment of this Court in **New India Assurance Co. Ltd. vs. Pazhaniammal (2011(3) KLT 648)**, in which it

is held that “if any one of the parties do not accept such charge sheet, the burden must be on such party to adduce oral evidence.”

3. The Tribunal failed to fix the quantum of compensation also. The appellants have claimed an amount of Rs.7,00,000/- as compensation in total. It was claimed that the deceased was a decoration worker, aged 52 years at the time of the accident.

4. We have gone through the evidence adduced before the Tribunal. Ext.A1 to A8 have been produced and Ext.A6 is the copy of the charge sheet. It is a case where the deceased was a pedestrian and the vehicle speeded over after knocking him down. The FIR was registered against an unidentified person, the vehicle as well as the driver were not identified. Ext.A5 is the Inquest report and Ext.A6 is the police charge sheet against the first respondent under Sections 279,304(A) of I.P.C and 134(a) and (b) of MV Act. Significantly, before the Tribunal, first respondent driver did not enter appearance or file any written statement. Therefore, the accident and the allegation of negligence are not disputed

by the driver. The same is the case with the owner of the vehicle also. It appears that the Tribunal accepted the arguments of the learned Counsel for the Insurance Company, that there is a delay of 8 months in tracing out the vehicle and therefore further evidence ought to have been there. The award of the Tribunal is dated 18-3-2010. In the judgment rendered by this Court in **New India Assurance Co. Ltd vs. Pazhaniammal (2011 (3) KLT 648)**, the Division Bench considered whether the production of Police charge sheet is prima facie sufficient evidence of negligence for purpose of a claim under S.166 of the Act. We extract the relevant portion of the judgment below:

“In this context we feel it appropriate to refer to the practice adopted by many Tribunals in the State. Wherever a crime has been registered in respect of the accident and the investigation has culminated in the filing of a charge sheet by the police, such charge sheet is filed and the same is reckoned as sufficient to establish negligence on the part of the indictee. The practice has not received formal judicial approval and hence some Tribunals insist on oral evidence in support of negligence invariably. This consumes a lot of judicial time and the heavily over worked Tribunal spends its time on unnecessary oral evidence of negligence. We would certainly not want the Tribunals to be prisoners of the conclusions of police officers. If the Tribunal finds it suspicious, it can insist for better evidence. But as a general rule it can safely be accepted that

production of the police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under S.166 of the Motor Vehicles Act. A system cannot feed itself on a regular diet of distrust of the police. Prima facie, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the indictee. If anyone 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. In all other cases such charge sheet can be reckoned as sufficient evidence of negligence in a claim under S.166 of the Motor Vehicles Act. We mean to say that on production of such charge sheet the shifting of burden must take place. It is not as though we are not conscious of the dangers and pit falls involved in such an approach. But we feel that adoption and recognition of such practice would help to reduce the length of the long queue for justice before the Tribunals. The judicial recognition of the practice will help the Tribunals to ensure the optimum use of judicial time at their disposal for productive ventures."

5. Going by the said dictum, when the police charge has been produced, which is filed by the police after due investigation it can be accepted as evidence of negligence against the indictee. If anyone of the parties do not accept such charge sheet, they will have to adduce further evidence in the matter. Herein, as rightly pointed out by the learned Counsel for the appellants, no evidence was

adduced by the respondents in the matter. Even though, the learned Counsel for the Insurance Company submitted that the case may be remanded back, since the accident is of the year 2004, we find there is no reason to accede to the request. Apart from the same, the learned Counsel for the appellant submitted that compensation under Section 140 of the Act was granted by the Tribunal, against which order no appeal was filed by the Insurance Company also. Since respondents did not attempt to adduce any evidence, they have not discharged their burden. PW1 was examined by the appellants.

6. Since the charge sheet is sufficient to prove the prima facie negligence, we reverse the finding of the Tribunal on point No.1. The reason stated by the Tribunal that the vehicle was traced out after 8 months back and therefore, further evidence was required cannot survive in the light of the dictum laid down in **Pazhaniyammal's case** (supra).

7. As far as quantum of compensation is concerned, the monthly income claimed was at Rs.5000/-. The learned Counsel for the Insurance Company submitted

that the same is exorbitant. Considering the fact that he was a manual labourer, we find it reasonable to fix it at Rs.4000/- per month. The multiplier to be adopted is 11 going by the judgment of the Apex Court in **Sarala Verma vs. Delhi Transport Corporation (2010(2) KLT 802**. The claimants are 4 in number and therefore,  $\frac{1}{4}$  th have to be deducted towards personal expenses of the deceased.

8. The claimants will also be entitled for the compensation towards pain and sufferings, expenses for transportation, funeral expenses, compensation for loss of consortium, loss of love and affection and loss of estate.

We fix the compensation amount accordingly.

| <i><b>Heads of claims</b></i> | <i><b>Amount awarded by this Court</b></i> |
|-------------------------------|--------------------------------------------|
| Transport to Hospital         | 2000                                       |
| Loss of dependancy            | 396000(4000x12x3/4x11)                     |
| Loss of consortium            | 100000                                     |
| Loss of love and affection    | 100000                                     |
| Funeral expenses              | 25000                                      |
| Pain and sufferings           | 10000                                      |
| Loss of estate                | 35000                                      |
| <b>Total</b>                  | <b>668000</b>                              |

(Rupees six lakhs sixty eight thousand only)

9. Therefore, the total amount will come to

Rs.6,68,000/-. The same will carry interest at the rate of 7.5% per annum from the date of petition. The compensation would be apportioned among the appellants in the following ratio, 40:20:20:20. The Insurance Company will deposit the amount within a period of three months. We permit the appellants to withdraw the amount.

The appeal is allowed accordingly. There will be no order as to costs.

**T.R.RAMACHANDRAN NAIR**  
**JUDGE**

**P.V. ASHA**  
**JUDGE**

smm



