

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

MACA.No. 1269 of 2008 ()

AGAINST THE AWARD IN OPMV 375/1999 of M.A.C.T., PALAKKAD DATED 28-09-2007

APPELLANTS/PETITIONERS 2 TO 4:

1. N.K.SEETHALAKSHMI, D/O. Late N.S. KRISHNAN
KRISHNAN.

2. N.K.MEENA, AGED 3 YEARS
D/O.LATE N.S.KRISHNAN

3. N.K.SUNDAR,
S/O.LATE N.S.KRISHNAN, ALL ARE RESIDING AS 24/349
SRI.VALSAM, SINGLE STREET, NURANI
PALAKKAD

BY ADVS.SRI T.C. SURESH MENON
SRI.JIBU P THOMAS
SRI.P.S.APPU

RESPONDENTS/RESPONDENTS & 1ST PETITIONER:

1. R.VISWANATHAN, KALATHIL
HOUSE, KINASSERY AMSOM, PALAKKAD TALUK

2. K.P.GOVINDANKUTTY, S/O.GOVINDA MENON
RESIDING AT 17/733, KENATH PARAMBU, PALAKKAD

3. THE ORIENTAL INSURANCE COMPANY(P)LTD.
PALAKKAD

4. UNITED INDIA INSURANCE COMPANY (P) LTD.,
BRANCH OFFICE, G.B.ROAD, PALAKKAD.

5. N.K.RADHA, WIDOW OF N.S.KRISHNAN
RESIDING AT 24/349, SRI VALSAM, SINGLE STREET
NURANI, PALAKKAD

BY ADV. SRI.A.R.GANGADAS
BY ADV. SMT.P.LAKSHMI SREE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

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M.A.C.A. 1269 OF 2008
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Dated this the 13th day of August, 2015

J U D G M E N T

P.R.Ramachandra Menon, J.

Dismissal of the claim petition filed by the legal heirs of the deceased in respect of the accident occurred when the motor car driven by the deceased hit against the rear side of the lorry which was parked on the side of the road, is sought to be intercepted in this appeal. The claim petition was filed with reference to the alleged negligence on the part of the driver of the lorry in parking the vehicle without parking lights.

2. Appellants are children of the deceased and the 5th respondent is the widow, who was the first claimant in the claim petition . It is stated that the 5th respondent is no more and all the legal heirs are in the party array. The accident occurred on 18.05.1998 at about 11.45 p.m. The deceased was driving a Fiat car bearing No.KL.G.353. When the car was overtaking

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another vehicle which was proceeding in front, it admittedly went to the wrong side and hit against the lorry which was parked on the side of the road, resulting fatal injuries to the driver of the car, who succumbed to the injuries. This led to the claim petition, before the Tribunal. It was contended that the deceased was a Chartered Accountant and was earning more than Rs.50000/- per month. It was also stated that he was an office bearer of various Organizations/Institutions/Undertakings besides functioning as the Treasurer of the Chartered Accountants' Association.

3. The claim was for a total sum of Rs.16,11,000/-. Evidence was adduced from the part of the claimants by examining the first claimant as PW.1 and another person as P.W.2, besides producing documents as Exts.A1 to A10. The owner and driver of the lorry, who are respondents 1 and 2 herein, were examined as R.Ws.1 and 2. Exts.B1 to B6 were marked from the side of the respondents. After evaluation of the evidence adduced, the Tribunal arrived at a clear finding that the accident had occurred only because of rash and negligent driving

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of the driver of the car and that there was no negligence on the part of the driver of the lorry. It was accordingly that the claim petition was dismissed , which is under challenge in this appeal.

4. Heard the learned Counsel for the appellants as well as the learned Counsel appearing for the respondents 1 and 2.

5. The learned Counsel for the appellants submits that the finding rendered by the Tribunal, fixing negligence on the part of the deceased is not correct or proper. Reliance is sought to be placed on the registration of crime and such other materials brought on record. Learned Counsel also places reliance on the judgment of this Court in **Rose Lynd E.T. and another vs. Lekha alias Lekha Krishnakumar and others [2008 (4) KHC 184 (DB)]**, to contend that, it was only because of wrong parking of the lorry on the side of the road that the accident had occurred and in the said circumstance, fixation of negligence to an extent of 75% on the driver of the lorry, who had parked the vehicle without parking lights was essential.

6. The learned Counsel appearing for the respondents 1 and 2 submits that the version that the lorry was parked in a

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wrong manner is totally wrong and unfounded. It is stated, with reference to the actual facts and circumstances that there was absolutely no negligence or lapse on the part of the driver of the lorry in parking the vehicle. It is also stated that there were street lights on the road as brought in evidence and further that proper parking lights were also left ignited at the relevant time.

7. It is seen from the pleadings and proceedings that there was an allegation that the deceased was under the influence of the alcohol and that he was proceeding along the wrong side of the road, who lost the control over the car leading to collision of the car with the lorry, which was parked on the side of the road. Even after the hit, it is stated that, the car proceeded further to an extent of 25 metres and hit against a compound wall, aggravating the injuries caused, which finally led to the death of the deceased. The discussions made by the Tribunal in the award reveals that the first claimant, who was the widow of the deceased, examined as P.W1, had admitted in her evidence that there were street lights at the place of the occurrence and that the car was on the wrong side of the road. The driver of the lorry

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was examined as R.W.1 , who has stated that there were parking lights and that there was street lights as well at the spot. As it stands so, the decision rendered by a Division Bench of this Court in **2008(4) KHC 184** (cited supra) is not applicable, in view of the distinguishable facts and the evidence brought on record. The owner of the lorry, who was examined as R.W.2 deposed that the deceased had consumed liquor and was driving the vehicle accordingly. The police had investigated the matter and submitted a final report to the effect that the accident occurred was only because of the negligence of the deceased who was driving the car at the relevant time. It was after weighing the evidence as a whole, the Tribunal arrived at a finding that the accident was not due to the negligence of the driver of the lorry. We do not find any reason to come to a different finding.

8. It is revealed from the proceedings that the claim petition was initially filed by the claimants under Section 166 of the Motor Vehicles Act. Subsequently, an attempt was made to have it converted to be one under Section 163 A of the M.V.Act. It has been observed by the Tribunal in paragraph 11

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of the award that the said petition was not pressed and accordingly, it was dismissed. Later, yet another petition was filed as I.A. 3077 of 2007 by the claimants to review the order passed by the Tribunal in I.A. 6016 of 2006 and 884 of 2007. The said petitions were dismissed by the Tribunal. Admittedly, the above proceedings have not been subjected to challenge and the claim was being pursued as a petition under Section 166 of the M.V.Act. Based on the finding that the accident was not due to the negligence on the part of the driver of the lorry, the claim petition was dismissed. The said finding and reasoning do not call any interference.

9. However, the learned Counsel for the appellants brought it to our notice that no compensation was awarded by the Tribunal towards No fault Claim under Section 140 of the M.V.Act. By virtue of the said provision, it is not at all necessary for the claimants to plead or prove negligence. It is settled law that, even if the party concerned was negligent, the same in no way can reduce the extent of benefit obtainable under Section 140 of the M.V. Act (by virtue of mandate under sub

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section (4) of Section 140). This being the position, this Court finds that Section 140 claim is payable, in so far as no dispute is raised by the insurer of the lorry with regard to insurance coverage and further since there was no plea with regard to violation of any statutory/policy conditions; nor was it substantiated by the Insurance Company.

10. The learned Counsel for the first and second respondents (driver and owner of the lorry respectively) submits that a copy of the policy was produced before the Tribunal as Ext.B2 and further that the first respondent, who was the driver of the lorry was having valid driving licence. The learned Counsel also adds that since there was absolutely no lapse on the part of the driver or owner of the lorry, they wanted to establish the facts and figures and it was accordingly that they raised specific pleadings and turned up before the Tribunal giving evidence as R.W.1 and R.W.2. Since payment of compensation under Section 140 of the M.V.Act is statutory , notwithstanding anything with regard to negligence aspect , this Court finds it fit and proper to grant the relief to the said extent.

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11. Accordingly, there will be a direction to third respondent/Insurance Company to deposit the amount covered under Section 140 of the M.V.Act before the Tribunal in respect of the death of the deceased within one month from the date of receipt of a copy of the judgment, with interest at the rate of 9% per annum from the date of filing of the petition till realisation. It is open for the claimants to proceed with further steps to have disbursement of the amount in accordance with law.

**P.R. RAMACHANDRA MENON,
JUDGE**

**BABU MATHEW P. JOSEPH,
JUDGE**

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