

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

MACA.No. 2848 of 2014 ()

(AGAINST THE AWARD IN OP(MV)NO.503/2009 of M.A.C.T.,ERNAKULAM)

APPELLANTS/PETITIONERS IN OP.MV NO. 503/2009 OF M.A.C.T.ERNAKULAM.:

-
1. THANKAMMA, AGED 65 YEARS
W/O.LATE KUNJAN, KEERELIMALA HOUSE, ATHANI
KUSUMAGIRI, KAKKANAD.
 2. OMANA, AGED 39 YEARS
W/O.SURESH, KEERELIMALA HOUSE, ATHANI
KUSUMAGIRI, KAKKANAD.
 3. MANOJ, AGED 37 YEARS
S/O.KUNJAN, KEERELIMALA HOUSE, ATHANI
KUSUMAGIRI, KAKKANAD.
 4. ANITHA, AGED 34 YEARS
S/O.KUNJAN, KEERELIMALA HOUSE, ATHANI
KUSUMAGIRI, KAKKANAD.
 5. BAIJU, AGED 33 YEARS
S/O.KUNJAN, KEERELIMALA HOUSE, ATHANI
KUSUMAGIRI, KAKKANAD.
 6. JAYESH, AGED 28 YEARS
S/O.KUNJAN, KEERELIMALA HOUSE, ATHANI
KUSUMAGIRI, KAKKANAD.
 7. ANEESH, AGED 26 YEARS
S/O.KUNJAN, KEERELIMALA HOUSE, ATHANI
KUSUMAGIRI, KAKKANAD.

BY ADV. SRI.VA.OMANAKUTTAN

RESPONDENTS/RESPONDENTS IN O.P.MVNO. 503/2009 OF M.A.C.T. ERNAKULAM.:

-
- *1. AJITHKUMAR, AGED 26 YEARS
S/O.REGHUNATHAN NAIR, AJITH BHAVAN
NEAR BOOTHAKULANGARA TEMPLE, ELAMANNOOR P.O.
ENATHIMANGALAM
PATHANAMTHITTA DISTRICT - 689 645. [DELETED]

*2. K.J.PAUL, AGED 40 YEARS
KURREKKAL HOUSE, KALAMASSERY
KOCHI - 683 104. [DELETED]

*[RESPONDENTS 1 AND 2 ARE DELETED FROM THE PARTY ARRAY AT
THE RISK OF THE APPELLANTS AS PER ORDER DATED 27.02.2015 IN IA
618/15 IN M.A.C.A. No.2848/2014]

3. THE ORIENTAL INSURANCE CO.LTD
B.O.II, ERNAKULAM - 682 035.

R3 BY ADV.SRI.MATHEWS JACOB (SR.)
R3 BY ADV.SRI.PJACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

M.A.C.A.No.2848 of 2014

Dated this the 21st day of May, 2015

JUDGMENT

P.N.Ravindran,J.

The appellants are the claimants in O.P.(MV)No.503 of 2009 on the file of the Motor Accidents Claims Tribunal, Ernakulam. They are the mother, brothers and sisters of Shaiju, who succumbed to the injuries sustained by him in a motor accident that occurred at 4.30 p.m. on 29.9.2007.

2. It is stated that deceased Shaiju, a carpenter by profession, was travelling along the Sea Port - Air Port road on his motor bike when he was knocked down by a tipper lorry bearing registration No.KL-07/AT 8380 driven by the first respondent and owned by the second respondent. The appellants contended that the accident took place on account of the rash and negligent driving of the tipper lorry by its driver, the first respondent. In the Motor Accidents Claims Tribunal they claimed a sum of Rs.8,00,000/- in all as compensation under various heads. Respondents 1 and 2 did not enter appearance notwithstanding service of summons. Consequently they were set ex parte. The third respondent insurer entered appearance and filed a

written statement denying and disputing the claimants' contention that the first respondent was driving the tipper lorry in a rash and negligent manner. They contended that the deceased was driving the motor bike in a rash and negligent manner. They however, conceded the fact that the tipper lorry involved in the accident, which was driven by the first respondent and owned by the second respondent, was covered by a valid package policy issued by them.

3. Before the Motor Accidents Claims Tribunal both sides did not adduce any oral evidence. The claimants produced and marked Exts.A1 to A8 on their side. The Motor Accidents Claims Tribunal after considering the rival contentions held that the first appellant-first claimant, who is the only dependent of the deceased, is entitled to get a sum of Rs.5,07,000/- as compensation together with interest and costs, from respondents 1 to 3. The other claimants were held to be not entitled to any compensation for the reason that they are not the dependents of the deceased. The appellants have, aggrieved by the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

4. We heard Sri.V.A.Omanakuttan, learned counsel appearing for the appellants and Sri.Mathews Jacob, learned Senior Advocate appearing for the third respondent. Sri.V.A.Omanakuttan, learned

counsel appearing for the appellants submitted that the Motor Accidents Claims Tribunal has denied just and fair compensation to the appellants on the ground that there is no evidence to prove that the deceased was a carpenter by profession. The learned counsel submitted that Ext.A8 inquest report prepared the day after the accident occurred notices the fact that the deceased was a carpenter by profession and therefore, the appellants may be granted an opportunity to adduce evidence to prove that the deceased was a carpenter by profession earning income as claimed in the claim petition. He submitted that in such circumstances the impugned award may be set aside and the claim petition may be remanded to the Motor Accidents Claims Tribunal for fresh trial and disposal after affording the appellants an opportunity to adduce evidence to prove their case that the deceased was a carpenter by profession earning a monthly income of Rs.6000/-. Sri.Mathews Jacob, learned Senior Advocate appearing for the third respondent insurer submitted that it was because of lack of evidence to prove that the deceased was a carpenter, that the Motor Accidents Claims Tribunal held that it is not possible to add 50% of the notional income for future prospects and therefore, on the evidence on record no exception can be taken to the impugned award. The learned Senior Advocate did not however oppose the submission made

by the learned counsel appearing for the appellants that the appellants may be afforded an opportunity to adduce evidence to prove their contention that the deceased was a carpenter by profession.

5. It is evident from the impugned award that no oral evidence was adduced before the Motor Accidents Claims Tribunal. No evidence to prove the case set out in the claim petition that the deceased was a carpenter by profession was produced. However, we find that in Ext.A8 inquest report it is stated that the deceased was a carpenter by profession. In such circumstances we are of the opinion that the appellants should be afforded an opportunity to prove their case that the deceased was a carpenter by profession and also the income which he was earning.

We accordingly allow the appeal, set aside the impugned award and remand O.P.(MV)No.503 of 2009 to the Motor Accidents Claims Tribunal, Ernakulam for fresh trial and disposal. The Motor Accidents Claims Tribunal shall try and dispose of the claim petition afresh expeditiously and in any event within an outer limit of six months from today after affording both sides an opportunity to adduce fresh evidence in support of their rival contentions. The appellants and the third respondent shall appear through counsel before the Motor Accidents Claims Tribunal, Ernakulam on 8.6.2015. The Motor

M.A.C.A.No.2848 of 2014

-.5:-

Accidents Claims Tribunal shall issue notice to respondents 1 and 2 before proceeding to try and dispose of the claim petition afresh. The parties shall bear their respective costs.

**P.N.RAVINDRAN,
Judge.**

**ANU SIVARAMAN,
Judge**

ahg.