

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.No. 1707 of 2008 ()

AGAINST THE AWARD IN OPMV 221/2003 of M.A.C.T.,KOZHIKODE DATED 10-09-2007

APPELLANT(S)/APPLICATNS IN OP:-:

1. P.K.VISALAKSHIAMMA AND OTHERS
NAIR, RESIDING AT SANTHI NIVAS, POST
GURUVAYOORAPPAN COLLEGE, KOZHIKODE.

2. P.K. PREMJIITH S/O LATE RAGHAVAN NAIR,
RESIDING AT SANTHI NIVAS
POST GURUVAYOORAPPAN COLLEGE, KOZHIKODE.

3. P.K. RENJITH, S/O LATE RAGHAVAN NAIR,
RESIDING AT SANTHI NIVAS
POST GURUVAYOORAPPAN COLLEGE, KOZHIKODE.

BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENT(S) :

1. V.RAMASWAMY AND OTHERS
NATHAMEDU, ARUR POST, NAMAKKAL DISTRICT
TAMILNADU. (DELETED FROM THE PARTY ARRAY VIDE ORDER DATED
16.01.2015 IN IA 138/2015)

2. P.VELUSWAMY, S/O PALANIAPPAN, RESIDING
AT 112/B, VALLIAPPAMPATTY PUDUR, PUDUPPALAYAM POST
P. VALUR TALUK, NAMAKKAL DISTRICT
TAMILNADU. (DELETED FROM THE PARTY ARRAY AT THE RISK OF
THE APPELLANTS VIDE ORDER DATED 04.12.2013 IN IA.3217/2013)

3. THE NEW INDIA ASSURANCE COMPANY LTD.,
RAM COMPLEX, 29 PARAMA ROAD, NAMAKKAL
TAMILNADU.

R,R3 BY ADV. SRI.JOY GEORGE
R,R3 BY ADV. SMT.PRAICY JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1707 of 2008

Dated this the 6th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants are the claimants before the Motor Accidents Claims Tribunal, Kozhikode in O.P.(MV) No.221/2003. They are the widow and two children of the deceased who met with an accident on 18.4.2002 at about 2 a.m. The deceased was travelling along with his son, appellant No.2 and one Shri Varghese in a car bearing Reg. No.KL-11-G-477. The car was being driven by appellant No.2 and one lorry bearing Reg. No.TAS 4747 dashed against the car, causing injuries to the passengers. Shri Varghese died on the spot and appellant NO.2 and his father were taken to Elight Mission Hospital, Thrissur.

2. It is seen from the evidence that the deceased was alive and under treatment for a period of 80 days i.e. from 18/4/2002 to 7/7/20020. (It is wrongly noted in paragraph 2 of the award that he

died on the same day). The deceased was initially treated in Elight Mission Hospital, Thrissur and thereafter at Baby Memorial Hospital, Kozhikode.

3. Before going into the contentions raised between the parties, it is seen that the appellants have produced various documents along with I.A.No.139/2015 and mainly those are medical bills to the tune of nearly Rs.3 lakhs. These have been produced in the light of the fact that he was under treatment for a long time and no amount has been awarded towards medical expenses by the Tribunal. Before the Tribunal also, already Ext.A1 copy of F.I.R., Ext.A2, copy of the treatment-cum-wound certificate and Ext.A3 post-mortem certificate were produced. It is further submitted by the learned counsel for the appellants that certain documents produced before the Tribunal including the documents showing payment of income tax by the deceased and the certificate showing treatment, have not been marked in evidence.

4. We heard learned counsel appearing for the insurance

company also.

5. Learned counsel for the appellants submitted that the Tribunal, while granting compensation, entered a finding that the liability of the owner and insurer of the lorry will be 50% and finally it was reduced to 5%, while fixing the amount of compensation. According to the learned counsel for the appellants, there is no evidence to sustain the finding of contributory negligence on the part of the driver of the car. We find from the discussion in paragraph 6 of the award that the Tribunal found fault with for not examining appellant No.2 and Mr. Varghese. Mr. Varghese succumbed to the injuries on the spot itself. The Tribunal observed that appellant No.2 wanted to wriggle out of the situation and accordingly arrived at the conclusion that the driver of the car is liable for contributory negligence.

6. In the light of the decision of the Apex Court in **Jiju Kuruvila and others v. Kunjujamma and others** (2013 ACJ 2141), as far as the aspect of contributory negligence is concerned, there should be independent evidence in the matter. Herein, the accident occurred at 2

a.m. The respondents have not adduced any evidence to show negligence on the part of appellant No.2 also. Therefore, the assumption by the Tribunal is without any legal evidence and therefore we vacate the said finding. The driver of the offending vehicle alone is liable as he was negligent. The owner and insurer are liable to compensate the victim's family. The insurer was directed by the Tribunal to meet the liability which we confirm.

7. The next aspect is regarding the quantum of compensation. The deceased was conducting timber business and the amount claimed a monthly income is Rs.12,000/-. It is seen that the Tribunal calculated loss of dependency at Rs.1,20,000/-, compensation for pain and suffering at Rs.5,000/-, loss of consortium at Rs.7,500/-, Transportation expenses at Rs.1,000/- and funeral expenses at Rs.2,000/-.

8. Learned counsel for the appellants relied upon the decision of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (2) KLT 89 - SC) and other recent decisions whereby it has been held that towards compensation for loss of consortium, an amount of Rs.1 Lakh can be

granted and towards loss of love and affection also, an amount of Rs.1 Lakh can be granted. For funeral expenses, an amount of Rs.25,000/- will be a reasonable amount.

9. Herein, the award is passed in the year 2007, viz., before the judgment in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC). Therefore, the matter will have to be considered afresh in the light of the judgment in the above cases and later decisions, to assess the proper compensation. Since Annexure A1 series medical bills have been produced before this Court, we allow the appellants to produce the same before the Tribunal for seeking adjudication of the matter.

10. In that view of the matter, the appeal is allowed the matter is remanded for consideration afresh by the Tribunal. The medical bills and other documents, if any, will be produced by the appellants before the Tribunal and a fresh award will be passed after considering various aspects for fixing the quantum of compensation.

The Registry will return the documents produced along with I.A.

No.139/2015 for enabling the appellants to produce the same before the Tribunal. The parties will appear before the Tribunal on 10.3.2015 and every efforts will be taken by the Tribunal to dispose of the matter expeditiously, at any rate, within a period of four months thereafter. Parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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