

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

MACA.No. 3220 of 2009 ()

(AGAINST THE AWARD IN O.P. (MV) NO.1751/2003 OF MACT
PERUMBAVOOR)

APPELLANTS/PETITIONERS:

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1. K.N.CHANDRAN, AGED 54
KOOTUMPURATH, VALAMBOORKARA, MAZHUVANNUR VILLAGE.
 2. RADHA, W/O. CHANDRAN, AGED 49 ,
KOOTUMPURATH, VALAMBOORKARA, MAZHUVANNUR VILLAGE.
 3. ANUSHA, D/O. CHANDRAN, AGED 23,
KOOTUMPURATH, VALAMBOORKARA, MAZHUVANNUR VILLAGE.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS/RESPONDENTS:

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1. P.JANARDHANAN, S/O P.BABU, CHITHRA
UDDIMAHATHULU, KODAVOR, P.O.UDUPPI DISTRICT
KARNATAKA.
 2. ABOOBACKER, S/O. BAPUKUNJI,
K.P.BAIL'S HOUSE, BOLAMUTHUR, KALLUDUKKA
MANGALAPURAM, KARNATAKA.
 3. THE NATIONAL INSURANCE COMPANY LTD.,
UDUPPI BRANCH, KARNATAKA.

R3 BY ADV. SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.3220 OF 2009

Dated this the 12th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimants before the Tribunal from the award in O.P.(MV)No.1751/2003. They are the parents as well as the sister of the deceased. The deceased was travelling in a jeep bearing Reg.No. KL-17/4735 from Cherrikuzhi to Erumapatti through the Kunnamulam - Thrisur road. The road lies from east to west. The accident occurred on 20.8.2003 at about 3 p.m. at a place called Eraneloor near Kunnamkulam. The offending vehicle bearing Reg.No.KA 20/9355 which was coming from the opposite direction hit against the jeep. The deceased was driving the jeep and he sustained serious injuries and succumbed to the injuries while undergoing treatment in the Medical College Hospital, Thrissur. The Tribunal found contributory negligence on the part of the deceased driver and after awarding a compensation of ₹2,48,190/-, it is stated that 50%

will be disbursed to them namely ₹1,24,100/-.

2. As regards the aspect of contributory negligence is concerned, what we find is that the Tribunal referred to the mahazer which was marked in evidence as Ext.A2. The width of the road is 6.70 metres. The front portion of the jeep was completely damaged going by the report of the Assistant Motor Vehicle Inspector, produced as Exts.A4 and A7. Ext.A3 is the certified copy of the charge sheet wherein the driver of the lorry was arrayed as the accused.

3. The learned counsel for the appellant submitted that the Tribunal without any evidence assumed that the driver of the jeep slept for a while at the time of the accident and this would have contributed the occurrence. PW2 is another witness who was residing nearby. According to him, he got up at 3 a.m. after hearing the sound. He had not directly seen the accident, but heard the sound alone. The version given by him is that the accident occurred half metres north from the southern tar end. While attacking the acceptability of Ext.A2, the learned counsel for the appellant submits that Ext.A2 will show that the scene was earmarked as identified by a Constable. It is submitted that when the charge sheet is there, the same will have to be accepted as a

prima facie proof of negligence going by the various decisions of this court and the Apex Court. He relied upon the judgment of this Court in **New India Assurance Co. Ltd. v. Pazhaniammal and others (2011 (3) KHC 595)** in that context. We find from the charge sheet that the driver of the lorry has been arrayed as the accused. In the light of the dictum laid down by this Court in the above case, charge sheet is a prima facie sufficient evidence of negligence for the purpose of a claim under Section 166 of the Act. It was further held by this Court that if any one 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.

4. The learned counsel for the Insurance Company submits that in this case it can be seen that the Tribunal did not accept the charge sheet and therefore the acceptance of the scene mahazer cannot be said to be irregular. But we find from the discussion that the Tribunal did not discard the charge sheet at all. After referring to the charge sheet, the Tribunal had referred to the report of the AMVI, the

scene mahazer and the evidence of PW2. Finally contributory negligence is found on the presumption that the driver of the jeep would have slept while driving. The same is without any legal evidence in the matter.

5. Further question is whether on the basis of scene mahazer alone negligence could be found. We find that the law as regards the same is settled in the light of the judgment of the Apex Court in **Jiju Kuruvila and others v. Kunjamma Mohan and others (2013 (9) SCC 166)**, paragraph 24 of which is extracted below :

“ 24. The mere position of the vehicles after accident, as shown in a Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In

absence of such direct or corroborative evidence, the Court cannot given any specific finding about negligence on the part of any individual.

6. In the above dictum, it has been explained that merely because of the recordings in the scene mahazer in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. If that be so, we cannot accept the findings by the Tribunal.

7. As regards the calculation of compensation, the Tribunal has entered a finding that as he was a bachelor aged 21, he would have married at the age of 28 and the contribution will be ₹1670/- per month for seven years and for the remaining 8 years, the claimants can expect only $\frac{1}{2}$ of the same i.e. ₹835/-. In the light of the judgment of the Apex Court in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**, the said method cannot be accepted and we will have to fix a reasonable multiplicand and adopt a proper multiplier also. Going by the judgment in **Sarla Varma's** case, the proper multiplier would be 18.

8. The dispute is as regards the acceptability of the salary

certificate which was produced and marked by the appellants as Ext.A14. We have gone through the contents of Ext.A14. What is recorded therein that the deceased was working in the firm as Manager-cum-Supervisor and was being paid ₹7,500/- per month.

9. The learned counsel for the Insurance Company submits that the author of the salary certificate has not been examined. The Apex Court has held that in cases like this, the court will have to find out whether the claim is exorbitant or not. Here it is true that Ext.A14 has not been marked through the author of the same. But as far as the salary of a driver is concerned, we will be justified in relying on **Kishan Gopal and another v. Lala and others (2013 ACJ 2544)** , wherein the Apex Court in paragraph 13 held that in case where the accident occurred in the year 2004, taking judicial notice of the fact that the post of a driver is a skilled job, the monthly income can be assessed at ₹6,000/- . Therefore, we will be justified in accepting the said criteria herein. Since the accident is of the year 2003, we will be justified in adopting ₹5,000/- as the monthly income of the deceased. 50% will have be deducted for the personal expenses and therefore the contribution towards the appellants will be ₹5,40,000/- (5000 x 12 x

18 x 50%).

10. The appellants will also be entitled for compensation under other heads namely, ₹1,00,000/- for love and affection and ₹25,000/- for funeral expenses. Even though the death occurred on the same day, the deceased had sustained very serious injuries. Therefore we award a sum of ₹10,000/- under the head of pain and suffering. We also grant a sum of ₹35,000/- towards loss of estate.

11. Accordingly the total compensation will be as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	540000
Transportation expenses	2500
Damage to clothings	250
Pain and suffering	10000
Loss of love and affection	100000
Funeral expenses	25000
Loss of estate	35000
Total	712750 (Rupees seven lakhs twelve thousand seven hundred fifty only)

12. The amount will carry interest @ 9% per annum for the

enhanced compensation. The appeal is filed with a delay of 384 days and in the light of the order passed in C.M.Appln. No.3834/2009, the Insurance Company will not be liable to pay interest for the above period. The amount will be shared equally by the appellants 1 and 2.

The appeal is accordingly allowed. The parties will bear their costs in this appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.

