

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

MACA.No. 3241 of 2009 ()

AGAINST THE AWARD IN OPMV 544/1999 of ADDL. MACT, MAVELIKKARA
DATED 12-02-2009

APPELLANTS/PETITIONERS 1 to 3 & ADDITIONAL PETITIONER No.5:

1. JAYALEKSHMI, PLAMOOTTIL HOUSE,
MANNAR P.O.

2. SARATH KUMAR, PLAMOOTTIL HOUSE,
MANNAR P.O.

3. SANTHY S.KURUP (MINOR),
PLAMOOTTIL HOUSE, MANNAR P.O.

4. APPUKUTTA KURUP, JAYA BHAVANAM,
PERUMPULICKAL, MANNAM NAGAR P.O., PANDALAM.

BY ADV. SRI.S.MOHANAN

RESPONDENTS/RESPONDENTS

1. NADARAJAN ACHARY,
THEKKEPARAMBIL VEEDU, MAVELIKARA MUNICIPAL, WARD NO.IX
MAVELIKARA.

2. USHA T.V.NAIR, USHAS,
NEAR BHS WEST, EAST MAVELIKARA P.O.

3. THE ORIENTAL INSURANCE CO. LTD.,
REP. BY ITS DIVISIONAL MANAGER, THIRUVALLA.

R3 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.No.3241 OF 2009

Dated this the 30th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

The claimants before the Tribunal are the wife and children as well as the mother (who died subsequently and additional 5th claimant was impleaded as the legal heir of the mother) of deceased Sudhakara Kurup. They have come up in this appeal. The deceased was riding a motor cycle from north to south along Mannar-Mavelikara public road and near Mannar market, the accident occurred on 22.2.1999. The offending vehicle is a stage carriage bus bearing Reg.No.KL 13 A/5373 and it hit against the motor cycle and he was thrown off to the road and sustained very severe injuries. He succumbed to the injuries while undergoing treatment in the Medical College Hospital. We are mainly on the quantum of compensation and the finding regarding contributory negligence to the extent of 20% of the deceased is also under challenge. The deceased was aged 46 at the time of the accident. He

was an ex-serviceman and was having chitty (banking) business and the monthly income claimed is ₹8,500/-.

2. The Tribunal relied upon Ext.A13 driving licence of the deceased to arrive at the correct date of birth which was 27.4.1953. Therefore the age going by the same was 46 years approximately as on the date of the accident. The multiplier going by the decision in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)** will be 13, if the age is taken as 46.

3. Heard. Herein the multiplicand adopted is only ₹3,000/- in the absence of any evidence and the deduction of personal expenses is 1/3. We are of the view that since the deceased was aged 46 and was having only a private chitty business and in the absence of any documentary evidence, the monthly income arrived at cannot be said to be too low for the year 1999. But the finding regarding negligence cannot obviously be sustained in the light of the fact that the driver of the offending vehicle was charge sheeted by the Police. Police charge has been produced as Ext.A8. In this context we rely upon the

judgment of a Division Bench of this Court in *New India Assurance Co.Ltd. v. Pazhaniammal* (2011 (3) KLT 648). It has been held therein that production of police charge sheet is prima facie sufficient evidence of negligence for the purpose of claim under Section 166. It was also 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. But in this case, there is no oral evidence on the part of the driver of the offending vehicle and he was ex parte before the Tribunal. The Tribunal fully relied upon Ext.A2 scene mahazar. The road was having a width of 6.36 metres. The sport of accident shown in Ext.A2 is 2.93 metres towards west from the eastern side of the road and the tarred portion had a width of 6.36 metres. The deceased was riding the motor cycle from north to south and the private bus was coming from south to north. The finding by the Tribunal is that the deceased happened to drive the motor cycle by occupying a width of 2.93 metres towards west from the eastern tar end. It is also observed that going by the scene mahazar, it can be seen that the first respondent was driving the

bus occupying a width of 3.43 metres towards east from the western tar end of the road and therefore at the time of occurrence, he was driving the bus towards east from the centre of the road. The centre of the tar road is at a spot of 3.18 metres. But the Tribunal went on to observe that the claimants had to explain the circumstances under which the deceased happened to drive the motor cycle by occupying such a width of 2.93 metres towards west from the eastern tar end. 20% contributory negligence on the part of the deceased was attributed.

4. According to us, the above finding cannot be supported in the light of the decision of the Apex Court in ***Jiju Kuruvila and others v. Kunjujamma Mohan Mohan and others (2013 ACJ 2141)***. Therein in paragraph 24, it has been held as follows :

“ 24. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to 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 their directions, etc. depends on a 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 occurred, 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 give any specific finding about negligence on the part of any individual.”

5. Going by the above dictum, it can be seen that mere position of the vehicles after the accident as shown in the scene mahazar cannot give a sufficient proof as to rash and negligent driving on the part of one or the other.

6. Therefore, the principles stated in both the above decisions will squarely apply to the facts of this case. In the absence of any evidence on the part of the respondents, the Tribunal was not correct in fixing the contributory negligence on the part of the deceased as 20% and we vacate the said finding.

7. As far as the quantum of compensation is concerned, we find that the Tribunal has granted only ₹3,000/- towards funeral expenses, ₹12,000/- for loss of consortium and ₹15,000/- towards loss of love and affection. For pain and suffering, ₹12,000/- has been granted. The appellants will be entitled for more amounts towards loss of consortium, loss of love and affection, funeral expenses and loss of estate.

8. Accordingly, we refix the compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	312000
Transportation	2500
Damage to clothing	1000
Funeral expenses	10000
Pain and suffering	12000
Loss of love and affection	100000
Loss of consortium	100000
Loss of estate	25000
Total	562500 (Rupees five lakhs sixty two thousand five hundred only)

9. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company has been found liable to indemnify the owner and we confirm the said finding.

10. The amount will be apportioned between the appellants in the same ratio as fixed by the Tribunal. The Insurance Company shall deposit the amount less the amount already deposited before the Tribunal within three months and we permit the appellants to withdraw the amount also.

The appeal is accordingly allowed. The parties shall bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.