

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 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

MACA.No. 2264 of 2008 ()

**AGAINST THE AWARD IN OP(MV) 1174/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
MUVATTUPUZHA DATED 31-03-2008
APPELLANT/PETITIONER IN OP(MV):**

**SHOBA RANI, W/O. SANJAY S. CHANDRAN
AGED 33 YEARS, SREE BHAVAN, KADAYIRUPPU P.O.
KOLENCHERY 682 311, ERNAKULAM DISTRICT.**

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENTS/RESPONDENTS IN OP(MV):

- 1. MOHANAN.M.P., S/O. VELAYUDHAN, MALLIL
HOUSE, VATTAKATTUPADY, PERUMBAVOOR.**
- 2. THE MANAGING DIRECTOR, K.S.R.T.C,
THIRUVANANTHAPURAM.**
- 3. THE BRANCH MANAGER,
THE NATIONAL INSURANCE CO.LTD.
THIRUVANANTHAPURAM BRANCH.**

R2 BY ADV. SRI.P.C.CHACKO, SC, KERALA STATE ROAD TRANSPORT CORPN.

**R3 BY ADVS. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
07-07-2015 ALONG WITH MACA 3012/2008, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

shg/

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

M.A.C.A.Nos.2264 & 3012 of 2008

Dated this the 7th day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellants are respectively the petitioners in O.P. (M.V.)No.1174/2004 and O.P.(M.V.)No.1175/2004 of the Motor Accidents Claims Tribunal, Muvattupuzha. The appellant in M.A.C.A.No.2264/2008 is the wife and the appellant in M.A.C.A.No. 3012/2008 is the husband.

2. The appeals have been filed challenging the finding regarding the contributory negligence on the part of the husband and apportioning of the same by 50:50 between the appellant husband and driver of the offending vehicle which belonged to the Kerala State Road Transport Corporation. The amount fixed as compensation is also under challenge. The third respondent in both the appeals is the insurer of the said vehicle and the policy is admitted.

3. A narration of the details will be necessary to consider the various aspects.

4. We heard the learned counsel for the appellants

Sri. Sajeevkumar K. Gopal, learned Senior Counsel for the Insurance Company Sri. Mathews Jacob in M.A.C.A.No.2264/2008 and learned counsel for the Insurance Company Sri. Lal George in M.A.C.A.No. 3012/2008.

5. The accident occurred on 12.03.2002. The appellant husband was driving a Maruti van bearing registration No.PY-01-P-1086 through N.H. from south to north. The bus having registration No.KL15-4221 was coming from north to south. The police have referred the case and the police records have been produced as Exts.A1 to A5 by the petitioners/appellants. The doctor has been examined as PW1. Hospital records are also marked in evidence.

6. We heard learned counsel on both sides with regard to the finding regarding negligence.

7. The Tribunal relied upon the First Information Statement as well as the Final Report made by the police and the document Ext.A4 which is the scene mahazar.

8. The case of the appellants is that they were proceeding through the road by keeping left side and there was a motorcycle going in front of the van which suddenly turned to the western side where there was a petrol pump. To avoid any collision with the motorcycle the appellant husband applied brake. The bus belonging to K.S.R.T.C. was coming through the opposite direction but on the wrong side. The collision between the van and the bus occurred in the above circumstances. Therefore they alleged that bus driver was totally negligent in causing the accident.

9. Learned counsel for the appellants submitted that the Tribunal erred in holding that the appellant husband is also liable in contributing to the occurrence of the accident, which is apportioned as 50%. It is submitted that this conclusion has been drawn even after finding that the bus was coming through the wrong side. The learned counsel also attacked the finding by the Tribunal that the appellant in M.A.C.A.No. 3012/2008 could have avoided the accident. It is submitted that the entire evidence if assessed properly

it can be seen that the vehicle driven by the appellant husband had not crossed mid line towards the right side and actually the bus has crossed the mid line and the negligence on the whole will have to be attributed to the driver of the bus.

10. This contention is countered vehemently by the learned counsel for the Insurance Company Sri. Lal George by submitting that the F.I. Statement, major part of which has been extracted in the judgment will show that only because the Maruti van turned towards right side after applying brake the accident occurred. This is the version of an eye witness who was sitting in a nearby ship. Thereby the impact of the accident was clearly on the front side of the bus which will show that the driver of the Maruti van was clearly negligent at least to the extent of 50%. In such circumstances, the learned counsel submitted that merely because of the entries in the scene mahazar, no negligence can be contributed to the driver of the bus. Learned counsel heavily relied upon the Final Report filed by the

police.

11. The learned counsel Senior Counsel for the Insurance Company Sri. Mathews Jacob further submitted that no cause has been shown by the appellants to disturb the finding now entered into by the Tribunal. Learned Senior Counsel submitted that there is no independent evidence to support the version of the appellants. It is submitted that when records produced by the appellants which are the result of thorough investigation by the police show the involvement of the appellant husband in causing the accident, in the absence of contra evidence the Tribunal's view cannot be disturbed also.

12. As far as the evidence on the part of the appellants is concerned, it is seen that the appellant in M.A.C.A.No. 3012/2008 had filed a proof affidavit. There is no cross-examination of the appellant also. His version is in tune with the plea raised in the application. According to him the rider of the motor cycle applied brake suddenly and to avoid any hitting by the Maruti van, he also applied

brake. The Maruti van slightly turned to the right side and only because the bus driver was plying through the wrong side after crossing the middle line of the N.H. the accident had occurred.

13. Of course in a matter like this the evidence of the parties and the circumstances will have to be analyzed. When negligence is attributed to a person the true question will be whether the accident is the direct result of his rashness or negligence in driving the vehicle. It is not the case of the respondents also that the Maruti van was coming in great speed and was being driven rashly or negligently. The developments leading to the accident, when assessed it can be seen that the application of brake by the rider of the motorcycle triggered the subsequent events. Of course to avoid hitting of the motorcycle, the appellant in M.A.C.A.No. 3012/2008 even going by his proof affidavit applied brake. The same was done by him purely out of his own judgment to avoid an accident. The swift action by him clearly avoided hitting the motorcycle.

Normally he could not have anticipated the rider of the motorcycle applying its brake suddenly or turning towards left. There is no evidence to show that the Maruti van was coming through the wrong side from south also.

14. The accident herein is the result of the hit between the Maruti van and the bus. The entries in the scene mahazar clearly point out to the fact that the offending vehicle viz; the bus had crossed the mid line. The width of the road going by the entry therein is 7.8 mtrs. The scene of occurrence viz. the point at 2.10 mtrs. east of the western tar end. The Tribunal also found in paragraph 8 that the accident occurred on the correct side of the Maruti van and wrong side of the bus. On a finding that there is no mechanical defect going by the reports Exts.A3 and A4 of the Motor Vehicle Inspector the Tribunal observed that both drivers could have avoided the accident. In consequence of the said finding it was held that both are equally liable for the accident at 50% each.

15. The vehement plea raised by the learned counsel

for the appellants is that if the driver of the bus was cautious in driving through the proper side he could have avoided the accident. Per contra Sri. Lal George and learned Senior Counsel Sri. Mathews Jacob submitted that if the appellant in M.A.C.A.No. 3012/2008 was cautious enough the accident would not have occurred at all.

16. While attributing contributory negligence in an accident, we will have to find out whether the immediate cause of the accident is the negligence of the person against whom the contributory negligence is alleged. The circumstances and the evidence available in the scene alone will help the court to arrive at a plausible conclusion. If that be so, in this case as far as the bus is concerned, it had clearly crossed the mid line. But evidently the bus driver could not have anticipated the vehicle coming from the opposite side, turning into the direction of the bus or touching any part of the bus. If that be so, according to us, the responsibility of the appellant in M.A.C.A.No.3012/2008, as a prudent man will have to be considered. A mere error

of judgment normally cannot be attributed as negligence in causing an accident. But still while applying the brake and while following the motorcycle from behind he could have normally expected that being National Highway through the opposite side vehicles may be passing frequently. In that view of the matter, according to us, in this case the contribution of the appellant in M.A.C.A.No.3012/2008 at least is there to a minimum. Hence instead of ratio adopted by the Tribunal at 50: 50, we adopt it as 80:20; and 80% on the part of the driver of the bus as he had crossed the middle line and 20% as the part of the appellant in MACA 3012/2008. Therefore, to the extent of 80% the Insurance Company will be liable.

17. Now we proceed to assess the claim for enhancement of compensation. As far as the injuries are concerned, serious injuries have been caused to both the appellants. The major injuries, going by the records is that he had suffered fractures on the first to 7th ribs. There was step deformity to the mandibular region left side, extra

dural haematoma in the brain and contusion left shoulder.

18. Appellants were admitted in Medical Trust Hospital, Ernakulam and the appellant in M.A.C.A.No.3012/2008 was discharged on 2.5.2002 and the period of treatment as inpatient is 52 days. The total expenditure for medical treatment is Rs.1,19,832.48. The investigations, conducted going by Ext.A7 are; CT brain plain: (R) FTP EDH, CXR: 1-7th ribs fracture (L) side, C Spine: WNL. It is recorded in Ext.A7 that he underwent emergency (R) FTP decompressive craniectomy + evacuation of (R) FTP EDH. Post operatively treated with antibiotics, analgesics, antiepileptics, antiedema measures.

19. He claimed to be a business man having Rs.15,000/- as monthly income. The Tribunal after taking the monthly as Rs.2,500/- granted Rs.10,000/- towards partial loss of earnings. The total compensation awarded after quantifying under different heads is Rs.1,71,350/-. As far as the appellant is concerned, there is no disability and no disability certificate has been produced in evidence also.

The Tribunal has granted amounts for pain suffering at Rs.20,000/-, and for loss of amenities Rs.15,000/- and conventional amounts at Rs.2,000/- each towards transportation charges, extra nourishment and bystander's expenses. The injuries being serious and the period of treatment being 52 days he will be entitled for reasonable amount towards pain and suffering, which we fix at Rs.35,000/- and for loss of amenities (temporarily) also, we award Rs.20,000/-. For bystander's expenses, we award amount at the rate of Rs.200/- per day for 52 days (Rs.10,400/-). Even though the claim was that he was earning Rs.15,000/- per month, there is no real evidence in the matter. There is no proof regarding his educational qualification and business activities also. We fix a reasonable amount of Rs.3,500/- towards monthly income. Partial loss of earnings in the light of the seriousness of injuries and the treatment undertaken we grant for a period of six months.

20. Accordingly, we refix the compensation as shown

below:

Head of claim	Amount re-fixed in Rs.
Expenses of bystander	52x200 10400
Transportation expenses	3500
Extra nourishment	2500
Damage to clothing	1000
Medical expenses	119850
Pain and suffering	35000
Loss of amenities	20000
Partial loss of earnings	3500x6 21000
Total	2,13,250 (Rupees two lakh thirteen thousand two hundred and fifty only)

Therefore the total compensation will be Rs.2,13,250/- and the Insurance Company will be liable for 80% of the above amount.

21. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

22. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit

being made, the appellant will be entitled for the release of the amount.

23. As far as M.A.C.A.No.2264/2008 is concerned, the appellant had sustained very serious injuries. She was treated as inpatient for a period of 49 days and was discharged on 30.04.2002. She was working as a Senior Clerk in Railway. The evidence shows that she had sustained the following injuries, which are supported by Exts.A9 and A10:

Small sutured wound left temporal region with haematoma. Contused abrasion left shoulder, right upper limb in below elbow slab. Soft swelling right parietal region. Bleeding contusion right eye.

24. We extract herein below the details of treatment undertaken, as per Ext.A10:

Patient underwent emergency laporotmy and splenectomy on 12.3.2002. Post operative period was gradual and improvement was slow. Tracheostomy was done for effective tracheo bronchial toilet. Patient was on prolonged ventilatory support (24 days) after which was gradually weaned off the ventilator. LRTI, Urinary Tract Infection were adequately treated with appropriate antibiotics. Chest and limb physiotherapy were given. Ortho, Neurology, Nephrology, Gastroenterology, Ophthalmology, Physician consultations were given and advice followed.

The Doctor has also recorded that the conditions of discharge are the following one:

GCS E4 M6 V4. Pupils R 2 mm. L3mm with (L) 3rd nerve palsy.

Fully conscious and ambulant with support.

Tracheostomy wound healed.

25. The Tribunal had occasion to observe the physical frame of the appellant who was aged 29 at the time of the accident. The certificate Ext.A10 is issued in the year 2008 which shows that even as on that date there was not much improvement in the condition of the appellant wife. The Tribunal has recorded in paragraph 14 of the award that due to spinaenectomy her immunity stood at reduced level and there is chance for infection. This observation is made based on the evidence of PW1 doctor. He had also deposed that the the appellant has ballistic movements for both limbs which is due to the consequence of upper brain stem involvement and he has also deposed before the court that the possibilities for getting cured is too remote. In paragraph 16 of the award the Tribunal has recorded the

following facts:

On 10.3.08 petitioner was present. I could notice tremor to her hands, difficulty for speech. It was reported that there is a scar on her belly in a length of 21 cms. in width of 2 to 3 cms. There is a bulging on the rear side of her head with a diameter of 3 cm. Ext.A11 shows that a sum of Rs.2,07,065/- was expended for treatment.

It will show that apart from tremor to her hands there is difficulty for speech also. The huge expenses incurred for treatment at more than Rs.2 lakhs shows evidently that she was subjected to detailed medical treatment for all the injuries sustained.

26. It is the case of the appellant that she had lost her job in the Railways. But the Tribunal did not accept it since no concrete evidence was produced to prove the same. Before this court also, no documentary evidence is there to show that she had lost the job. But we will have to assess the compensation based on the salary she was getting at the time of accident. The same is proved through document Ext.A12 which shows the salary for March 2002 was Rs.7,728/-, for February it was Rs.7,776/- and for April 2002 it was Rs.3,096/- obviously because during that period she

was in the hospital. After going through the documents revealing the payment of tax paid by her viz. Ext.A14 and Ext.A15 the net income was assessed at Rs.65,107/- after deduction of income tax and the monthly income is assessed as Rs.5,426/-. We also adopt the said amount as monthly income.

27. The Tribunal has assessed the percentage of disability at 30%. Of course there is no assessment by the Medical Board. This assessment has been made by the Tribunal evidently because of the observations in the treatment records which is supported by the evidence of PW1. It is clear that she has lost power of speech to a great extent and the physical frame is also not stable. The assessment of disability at 30% is therefore cannot said to be excessive, even though learned counsel for the Insurance Company submitted that the assessment is on a higher side. Functional disability can be taken at an equal percentage.

28. She will have to adjust herself to the disabilities to the rest of her life. She was aged only 29 at the time of

accident. The fact that the power of speech stands affected to a greater extent will deprive her all the pleasures of life, ability to interact with people, enter into any effective conversation either with family members or in the workplace and the like. Apart from the same, in the light of the observations made in paragraph 16 of the award, there is disfigurement also and it will have to be considered for assessing the compensation.

29. In view of the period of treatment and the seriousness of injuries and disabilities, we award Rs.50,000/- each towards pain and suffering and for loss of amenities (due to the disabilities). The Tribunal has granted meagre amount towards compensation for permanent disability. Only an amount of Rs.2,500/- is taken as the income for assessing the disabilities after retirement and multiplier is taken only as 5 obviously for granting amount after retirement. The same is not a correct method. Herein the multiplier will be 17 going by her age and by taking the monthly income as Rs.5,425/- the amount towards

permanent disability will be Rs.3,32,010/-. We award an amount of Rs.30,000/- towards disfiguration also. She will be also entitled for enhancement of the compensation towards bystander's expenses, extra nourishment and transportation expenses. We therefore re-fix the compensation in the following manner:

Head of claim	Amount re-fixed in Rs.	
Bystander's expenses	49x200	9800
Extra nourishment		2500
Medical expenses		207100
Spleenotomy		5000
Damage to clothing		1000
Pain and suffering		50000
Loss of amenities		50000
Disability	5425x12x17x30/100	332010
Disfiguration		30000
Partial loss of earnings		36753
Transportation		3000
Total		7,27,163
	Round off to Rs.7,27,200/-	
	(Rupees seven lakhs twenty seven thousand two hundred only)	

30. The Insurance Company will be liable to satisfy the award upto 80%.

31. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

32. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months and the appellant will be entitled for the release of the amount.

The appeals are accordingly allowed. There will be no order as to costs in the appeals.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

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