

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

O.P.(MAC).No.161 of 2014 (O)

AGAINST THE ORDER IN I.A.NO.3966 OF 2014 IN O.P.(MV) NO.1787/2011
DATED 01.08.2014 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM.

PETITIONER(S):-

1. SARASWATHY AMMA, AGED 55 YEARS,
W/O RAJENDRA KURUP, RAJ BHAVAN, MEVANAKKONAM CHERRY,
KALLUVATHUKKAL VILLAGE, KOLLAM DISTRICT, PIN - 691578.
2. SUNIL RAJ, AGED 29 YEARS, S/O RAJENDRA KURUP,
MEVANAKKONAM CHERRY, KALLUVATHUKKAL VILLAGE, KOLLAM DISTRICT,
PIN - 681 578
3. SARITHA RAJ, AGED 26 YEARS, D/O RAJENDRA KURUP,
MEVANAKKONAM CHERRY,
KALLUVATHUKKAL VILLAGE, KOLLAM DIST., PIN - 691 578

BY ADV. SRI.P.N.GOPINATHAN NAIR.

RESPONDENT(S):-

1. ASHOK KUMAR,
KARAYIL, PUTHENTHURA P.O.,
NEENDAKARA KOLLAM DISTRICT, PIN - 691 588.
2. MANOJ, S/O RAJU, MANOJ VILASOM, KOVOOR,
ARINALLOOR, P.O. MANGAPALLY, KOLLAM DISTRICT, PIN - 690538.
3. THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO.LTD, BEACH ROAD,
KOLLAM DISTRICT, PIN - 691 001.

R3 BY STANDING COUNSEL SRI.JOHN JOSEPH VETTIKAD

THIS ORIGINAL PETITION (MAC) HAVING BEEN FINALLY HEARD ON
09-03-2015, THE COURT ON 07-04-2015 DELIVERED THE FOLLOWING:-

O.P.(MAC).No.161 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1 COPY OF THE ORIGINAL PETITION NO 1787/2014 BEFORE
MACT, KOLLAM.
- EXHIBIT P2 COPY OF THE LEGAL HEIRSHIP CERTIFICATE ISSUED BY THE
TAHSILDAR, KOLLAM.
- EXHIBIT P3 TRUE COPY OF THE DEATH CERTIFICATE OF THE GOURIKUTTY AMM,
ISSUED BY THE KALLUVATHUKKAL GRAMA PANCHAYATH.
- EXHIBIT P4 TRUE COPY OF THE I.A NO 3966/2014 IN OP(MV) NO 1787/2011
BEFORE THE MACT, KOLLAM.
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 01-08-2014 PASSED BY THE
MACT, KOLLAM IN I.A NO 1787/2011.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/

[true copy]

“C.R.”

K. Vinod Chandran, J.

O.P(MAC) No.161 of 2014-O

Dated this the 07th day of April, 2015

JUDGMENT

The short question to be decided in the aforesaid case is, whether the mother of a deceased who survived the death of her son; but expired before the claim for compensation was decided; ought to have been impleaded and on her death; whether her legal heirs are to be impleaded.

2. The petitioners herein are the wife and children of one Rajendrakurup, who died in a road traffic accident on 07.05.2010. The petitioners together filed O.P.(M.V.).No.1787 of 2011, seeking compensation. Admittedly the mother of the deceased was alive at the time of filing of the claim and she was not arrayed as a petitioner or a respondent, allegedly since her whereabouts were not known. The mother is also said to have died on 21.05.2013, three years after the death of her son.

3. When the claim petition came up for evidence, on the submission of the Insurance Company, the Motor Accidents Claims Tribunal [for brevity “the Tribunal”] directed impleadment of the legal

heirs of the deceased mother. A review was filed by the petitioners, claiming that the same is not required; since now only the legal heirs of the mother are alive and they are not entitled to claim damages for the death of their brother. The said application was dismissed by a detailed order, evidenced at Exhibit P5. The petitioners challenge the direction to implead the legal heirs of the deceased mother.

4. The claim petition filed, produced at Exhibit P1, indicate that it is one filed under Section 166 of the Motor Vehicles Act, 1988 [for brevity “MV Act”]. The scope as to who would be persons competent to make an application for compensation was elaborately considered by this Court in ***Sreerangan v. New India Assurance Co. Ltd.* [2014 (4) KLT 378]**, based on a Division Bench decision of this Court in ***Cheriyakutty Mammi v. Ummerkutty* [1995 (2) KLT 555]**. “Legal representative” as indicated in Rule 2(k) of the Kerala Motor Vehicles Rules, 1989, was held to be wider than the term “legal heir”. A “legal heir” is only one of the categories included in the definition of “legal representative”. The word “injury”, used, was also held to have a wider connotation with respect to damages.

The Division Bench found that any person who lost dependency, consortium and any other kind of support as a consequence of death of the victim in the accident would be entitled to claim compensation.

5. The learned counsel for the petitioner places before me a decision of a Division Bench of the Calcutta High Court, reported in **Laws (Cal)-2006-11-31 [Vasuri Shaw vs. New India Assurance Co. Ltd.]**; which, however, runs contrary to the proposition advanced in the writ petition. There, the sisters of a deceased, along with his widow, filed a claim under Section 166 of the Act. The widow appeared therein and contended that she alone is entitled to compensation and sought dismissal of the claim petition under Section 166; especially since she herself had filed a claim petition under Section 163A. The Division Bench noticed the distinction on, who is entitled to make a claim under Section 163A and 166. Section 166 confers right of a claim to the “legal representatives” while Section 163A confines it to “legal heirs”. Hence, it was laid down that under Section 166 any person who suffered injury could make a claim and it was a matter of evidence as to whether a person suffered an injury by reason of

the loss of dependency. The sisters hence were found to be entitled to lead evidence as to their dependency and the rejection of the claim at the threshold was found to be bad.

6. Herein also the claim is under Section 166, but the direction to implead the siblings is not on account of their dependency; but as legal heirs of their deceased mother. The mother of the person; whose death in the motor vehicle accident gave rise to the claim, was alive at the time of his death and it cannot be disputed that she is a “legal heir” who would even be entitled under Section 163A. Her claim under Section 166 cannot at all be disputed.

7. *Anuradha Varma v. State of Kerala* [1993 (2) KLT 777] held that the right to claim damages survives to legal representatives for reason of Section 9 of the Torts (Miscellaneous Provisions Act, 1977 (Kerala) having overridden Section 306 of the Indian Succession Act, 1925, so far as action in torts are concerned. The claimant who was the injured in the motor vehicle accident, died pending adjudication and the wife and children impleaded themselves. The Tribunal, on the basis of a concession made by the counsel, found that no compensation

is payable under the head 'pain and suffering', since the cause of action does not survive on the death of the claimant under Section 306. Based on the provisions of the Torts Act, [having received the assent of the President under Article 254 of the Constitution of India] the claim was held to survive on the legal representatives of the claimant.

8. The very same reasoning applies here. The mother being alive at the time of death of her son and having died only subsequently, while the claim was pending, her claim survives on her legal heirs. Support can be garnered also from ***Ali (Late) v. Sumesh* [2010 (3) KLT 70]** and ***Jaya v. Shaji* [2014 (1) KLT 31]**. In other words, the mother of the injured/deceased is entitled along with the other legal representatives, to claim for compensation under Section 166 of the MV Act and such compensation enures to the estate of the mother; which her legal heirs would be entitled to succeed to.

9. The mother of the deceased was alive when the son died in the accident and remained alive for another three years. Probably, the future dependency would be confined to three years, during which period she was alive. But, however, it

cannot be said that the mother was not a necessary party. The proviso to Section 166 also indicates that all legal representatives, if not impleaded as petitioners, shall be impleaded as respondents to the application. If the mother, at the time of death of her son and for the period in which she was alive after his death, was entitled to some compensation, then, definitely she had to be impleaded. On the mother passing-away in the course of the proceedings; definitely her legal heirs ought to be impleaded in the claim petition. Their claim would be limited to succeed to what their predecessor-in-interest was entitled to claim. In such circumstances, the petitioners have to implead the legal heirs of the deceased mother of deceased Rajendrakurup. The impugned order is upheld.

Original Petition is dismissed. No costs.

Sd/-
K. Vinod Chandran,
Judge

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