

**(2024) 12 KL CK 0036**

**High Court Of Kerala**

**Case No:** MACA No. 4012 Of 2016

Ajitha

APPELLANT

Vs

Mohammed Basha

RESPONDENT

**Date of Decision:** Dec. 9, 2024

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 166

**Hon'ble Judges:** C.Pratheep Kumar, J

**Bench:** Single Bench

**Advocate:** R.Anilkumar, G.Radhakrishnan, S.Jayasree

**Final Decision:** Disposed Of

### Judgement

'''

C.Pratheep Kumar, J",,,

1. This is an appeal filed by the petitioners in OP(MV).1162/2011 on the file of the Motor Accident Claims Tribunal, Attingal, against the award dated",,,

28.5.2016 and claiming enhanced compensation.,,,

2. The appellants are the legal heirs and dependents of late Mohandas, who died in a motor vehicle accident that occurred on 24.8.2011. According to",,,

the appellants, on 24.8.2011 while the deceased was driving an autorikshaw bearing registration No.KL-16/D-5431 from Alamcode to Vanchiyoor and",,,

when he reached near Pallimukku, a private bus bearing registration No.KL-16/B-909 which came from behind, hit on the back side of the",,,

autorikshaw and as a result of which he sustained fatal injuries and he succumbed to the injuries at the Medical College, Thiruvananthapuram, while",,,

under treatment. The 1st respondent was the owner, 2nd respondent was the driver and 3rd respondent was the insurer of the said bus. According to",,,

them, the accident occurred solely due to the negligence of the 2nd respondent. The appellants claimed a compensation of Rs.14,34,000/-." ,,,

3. The respondents 1 and 2 remained ex parte. The 3rd<sup>^</sup> respondent filed written statement contending that the accident occurred due to the",,,

negligence of the deceased. The respondent produced Exts. A1 to A8 documents. The Tribunal, after finding that the compensation due to the",,,

appellants is Rs.11,53,600/- held that, there was contributory negligence on the part of the deceased. Therefore, the Tribunal awarded only 50% of the",,,

amount of compensation, namely Rs.5,76,800/- to the petitioners. Aggrieved by the above award, they preferred this appeal, raising various grounds." ,,,

During the pendency of the appeal, appellants 1 and 4 died and appellants 2 and 3 were recorded as their legal representatives." ,,,

4. Now the points that arise for consideration are the following :,,,

(i) Whether the finding of the Tribunal that there was contributory negligence on the part of the deceased is correct ?,,,

(ii) Whether the quantum of compensation awarded by the Tribunal is liable to be modified ?,,,

5. Heard Sri.G.Radhakirishnan, the learned counsel for the appellants and Smt.S.Jayasree, the learned Standing Counsel for the 3rd respondent/" ,,,

Insurance Company.,,,

<sup>^</sup>,,,

6. The points:- The 3rd respondent has admitted the accident as well as the policy. However, they have raised a contention that the accident occurred",,,

on account of the negligence of the deceased. In order to prove the negligence on the part of the 2nd respondent, namely, the driver of the bus, the",,,

appellants relied upon Ext.A1 FIR and Ext.A5 charge-sheet. In Ext.A5 the 2nd respondent is shown as the accused. The Tribunal also relied upon",,,

Ext.A5 final report to hold that there was contributory negligence from the side of the deceased. At the time of argument, the learned Standing",,,

Counsel also relied upon Ext.A5 Final Report to substantiate her argument that there was contributory negligence on the part of the deceased.,,,

7. As held by this Court in the decision in New India Assurance Co.Ltd v. Pazhaniammal, 2011 (3) KLT 648, the production of charge sheet is prima",,,

facie sufficient evidence of negligence for the purpose of a claim under Section 166 of the Motor Vehicles Act. If any of the parties do not accept",,,

such charge sheet, the burden is on such party to adduce evidence. In the instant case, no evidence was adduced on behalf of the 3rd respondent to",,,

controvert Ext.A5 final report.,,,

8. It is true that in Ext.A5, there is a statement to the effect that, the deceased while driving autorikshaw, overtook the bus and when another",,,

autorikshaw came from opposite direction, the deceased turned his autorikshaw towards left and it was at that time, the bus hit on the autorikshaw. At",,,

the same time, in the final report, the allegation of rashness and negligence is alleged only against the 2nd respondent. Though it is stated in the final",,,

report that the deceased had overtaken the bus, there is no whisper in the final report that the deceased had driven the autorikshaw in a rash and",,,

negligent manner so as to endanger human life.,,,

9. The learned counsel for the appellants relying upon the decision of the Hon'ble Supreme court in Jiju Kuruvila v. Oriental Insurance Co.Ltd., 2013",,,

(3) KLT 261 [SC] would argue that position of the vehicles after the accident as shown in the scene mahazar cannot be considered as proof of",,,

negligence by the Tribunal. In paragraph 24 the Apex Court held that :,,,

“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.”,,,

10. In the instant case, there is no reliable evidence to prove that the accident occurred due to the negligence of the deceased. In the above",,,

circumstance, the finding of the Tribunal that there was contributory negligence on the part of the deceased for the mere reason that he overtook the",,,

bus is unsustainable. In other words, the Tribunal was not justified in deducting 50% of the amount of compensation on the ground that there was",,,

contributory negligence on the part of the deceased.,,,

11. In this case, the monthly income of the deceased as stated in the claim petition is Rs.6,500/-, while the Tribunal reduced the same to Rs.6,000/-for",,,

the purpose of quantifying the compensation. However, in the light of the dictum laid down in Ramachandrappa v. Manager, Royal Sundaram",,,

Alliance, (2011) 13 SCC 236, the notional income of the deceased is liable to be fixed at Rs.8,000/- per month. The age of the deceased was 50 years",,,

and therefore, the multiplier to be taken is 13 as per the dictum laid down in the decision in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC",,,

121",,,

and National Insurance Co.Ltd v. Pranay Sethi, (2017) 16 SCC 680. The appellants claimed 30% of the income towards future prospects, which was",,,

disputed by the learned counsel for the 3rd respondent. As per the dictum laid down in Pranay Sethi (supra), for those who come between the age",,,

group 40-50 without fixed income, income to be taken towards future prospects is 25%, while that for the age group 50-60 is 10%. In the instant case",,,

admittedly the age of the deceased is 50 years and 2 months and as such, he will come within the age group 50-60. Therefore, the income that could",,,

be added towards future prospects is only 10%. Therefore, his monthly income including future prospectus is taken as Rs.8800/- (8000 + 800).",,,

12. Since there are four dependents to the deceased, the Tribunal was justified in deducting 1/4th of the income towards personal and living expenses.",,,

Therefore, the monthly income of the deceased after deducting 1/4th towards personal and living expense, will come to Rs.8800 - 2200 = 6600/-.",,,

Yearly income after deduction will come to Rs.6600 x 12 = 79,200/-. Therefore, the loss of dependency will come to Rs.79,200 x 13 = 10,29,600/-.",,,

13. The Tribunal awarded a sum of Rs.25,000/- towards funeral expenses, Rs.5,000/- towards transportation charges, Rs.1,000/- towards damage to",,,

clothing, and Rs.10,000/- towards loss of estate. In addition to the same, a sum of Rs.1,00,000/- each was awarded towards loss of love and affection",,,

and loss of consortium. As per the decision in Pranay Sethi, the amount of compensation that can be awarded for loss of estate, funeral expenses and",,,

loss of consortium are 15,000/-, 15,000/- and 40,000/-respectively. Further, the above amounts are liable to be increased by 10% in every three year.",,,

Therefore, the amount that can be awarded for the above heads are Rs.18,150/-, 18,150/- and 48400/- respectively, out of which, the petitioners 1 to 4",,, are eligible to get compensation for loss of consortium.,,,

Sl. No.,Head of claim,"Amount awarded by the Tribunal(Rs)","Total amount after enhancement in appeal (Rs.)

1, Loss of earning, NIL, ---

2, "Loss of earning (partial)", NIL, ---

3, Funeral expenses, 25000, 18150

4, Transportation charges, 5000, 5000

5, Ambulance charges, NIL, ---

6, Extra nourishment, NIL, ---

7, Medical expenses, NIL, ---

8, By stander expenses, NIL, ---

9, Damage to clothing, 1000, 1000

10, Pain and suffering, NIL, ---

11, "Loss of dependency/earning power", 912600, 1029600

12, Loss of estate, 10000, 18150

13, "Loss of love and affection", 100000,

14, Loss of consortium, 100000,  $48400 \times 4 = 193600$

15, "Compensation for mental agony caused to the applicants due to the sudden demise of

the deceased",NIL,---

16,"Compensation for

expectancy ofÂ life",NIL,---

,Total,"11,53,600/-","12,65,500

,"Amount enhancedÂ (12,65,500 â€" 5,76,800" ,,"Rs. 688,700/-