

Parukutty vs Muhammed Shafeeque

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Court : Kerala

Decided On : Mar-07-2024

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : MACA/2055/2013

Appellant : Parukutty

Respondent : Muhammed Shafeeque

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. TH
THURSDAY, THE 7 DAY OF MARCH 2024 / 17TH PHALGUNA, 1945 MACA NO.
2055 OF 2013 AGAINST THE ORDER/JUDGMENT DATED 23.04.2012 IN OPMV
NO.500 OF 2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM
APPELLANTS/PETITIONERS:

1 PARUKUTTY, W/O KUNCHUNNI THARAKAN,
NENTHRAMKUNNATHE HOUSE, MANGODE PO, OTTAPALAM
TALUK, PALAKKAD DISTRICT. 2 INDRIA, W/O RAMANKUTTY,
MELEVATTA PARAMBATHU HOUSE, POOKOTTUKAVU PO,
OTTAPALAM TALUK, PALAKKAD DISTRICT. 3 GEETHA, W/O

RAVISANKAR, PADINJARUVEETIL HOUSE, EDATHANATTUKARA
PO, ALANALLUR. 4 BINDU, W/O SIVARAMAN, OKKATHE HOUSE,
MANGOD PO, OTTAPALAM. 5 SUNITHA, W/O RADHAKRISHNAN,
NAGAMBRATH HOUSE, MOOCHIKAL, EDATHANTTUKARA PO

BY ADVS. SRI.K.B.ARUNKUMAR SRI.RANJIT BABU
RESPONDENTS/RESPONDENTS:

1. MUHAMMED SHAFEEQUE, S/O ABU A, ACHIPRA HOUSE, KUNTHIPUZHA,
MANARKKAD, PALAKKAD .678 582 ACHIPRA ABU, S/O KUNHAMU, ACHIPRA
HOUSE, KUNTHIPUZHA,

2. MANARKKAD, PALAKKAD..678 582

3. THE UNITED INDIA INSURANCE COMPANY LTD.BRANCH OFFICE

PB NO.12 D BLOCK, 1ST FLOOR, PAZHERI PLAZA, KODATHIPADE,
MANNARKKAD, PALAKKAD DISTRICT.678 582 BY ADV SMT.RAJI T.BHASKAR
THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 07.03.2024, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

JUDGMENT

The appellants are the petitioners in OP(MV) No. 500/2010 on the files of the Motor Accident Claims Tribunal, Ottapalam. The said claim petition was submitted by the appellants seeking compensation for the death of one Kunjunni due to the injuries sustained in a motor accident that occurred on 17.01.2009.

2. According to the appellants, the accident occurred when

the motorcycle ridden by the deceased was hit by a car bearing registration number KL-09Q 1800 driven by the 1st respondent in a rash and negligent manner. The said vehicle was owned by the second respondent and was insured with the 3rd respondent. The 1st appellant was the wife of the deceased and the other appellants were the children of the deceased. The deceased was aged 68 at

the time of the accident. He was an ex-military and was also engaged in rubber tapping with a monthly income of Rs.14,000/-. The compensation was sought in such circumstances.

3. The 3rd respondent filed a written statement admitting

the coverage of the policy for the car. However, they denied negligence on the part of the 1st respondent and according to them, the accident occurred solely due to negligence of the deceased himself. The quantum of compensation was also disputed by them.

4. To substantiate their contentions, 2nd appellant was

examined as PW1 and as documentary evidence Exts. A1 to A13 were marked. No evidence was adduced by the respondents. After examining the materials placed on record, the Tribunal came to the conclusion that the deceased also contributed to the accident and his contribution was determined as 40%. Thus, the 3rd respondent was imposed with the liability to pay 60% of the compensation determined by the Tribunal. The quantum of compensation was fixed as Rs.5,04,560/- and the 3rd respondent was directed to deposit an amount of Rs.3,02,736 rounded to Rs.3,02,740/- with interest at the rate of 7% per annum from the date of petition till realisation with proportionate cost. This appeal is submitted by the appellants challenging the finding of the Tribunal on the question of contributory negligence and also seeking enhancement of compensation.

5. Heard, Sri.K.B Arunkumar, the learned counsel appearing for the appellants and Smt.Raji. T Bhasker, the learned counsel appearing for the 3rd respondent.

6. The first question to be considered is with respect to

the contributory negligence imposed upon the deceased. It is discernible from the records that the accident occurred when the motorcycle ridden by the deceased was hit by a car driven by the 1st respondent and insured with the 3rd respondent. For the purpose of determining the question of negligence, the Tribunal mainly relied on Ext.A2 Scene Mahazar prepared by the police during the investigation of the said crime. After examining the spot of the accident as is discernible from Ext.

A2, the Tribunal found that the motorcycle ridden by the deceased was extremely on its wrong side and therefore, 40% of contributory negligence was imposed upon him. However, the crucial aspect to be noticed in this regard is that, in connection with the accident the police

registered Crime no. 36/2010, and after completing the investigation, Ext.A3 final report was submitted, wherein, the 1st respondent was implicated as an accused. In *Jiju Kuruvila and Others v. Kunjunjamma Mohan and Others* [(2013) 9 SCC 166], the Honourable Supreme Court categorically observed that, the Scene Mahazar cannot be relied on for determining the question of negligence. It is to be noted in this regard that, the spot of the accident as seen from Scene Mahazar cannot be the crucial aspect for the determination of the said question. This is particularly because, the mahazar is prepared on the basis of the statements given by the persons who may or may not have witnessed the accident and the position of the vehicles, after the accident. Therefore, in the absence of any substantiating evidence in the form of deposition of eyewitnesses or any other sufficient evidence to establish the manner in which the accident occurred, the decision on the question of negligence cannot be taken, merely on the basis of the Scene Mahazar.

7. It is to be noted in this regard that, as far as Scene

Mahazar is concerned, the same would only indicate the spot of the accident which was determined on the basis of the statements of the third person and the crucial contributory factors for the accidents, such as, the traffic on the road at the relevant time, the speed of the vehicles, the condition of the road, the and other climatic conditions etc may not be evident from the Scene Mahazar. Another aspect to be noticed in this regard is that, the Scene Mahazar was prepared by the police as part of the investigation of the crime and ultimately the police after the

investigation found the 1st respondent responsible for the accident. In *New India Assurance Co.Ltd v, Pazhaniammal* [2011 (3) KLT 648], a Division Bench of this Court categorically observed that, in the absence of any contra evidence, the conclusions arrived at by the police in the investigation conducted by them in the crime registered in connection with the accident could be accepted as a prima

facie evidence to decide the question of negligence in the proceeding under section 166 of the Motor Vehicles Act.

8. In this case, even though the 1st respondent was

implicated as an accused as per Ext. A3 final report, no contra evidence was adduced by any of the respondents. Therefore, the only reliable evidence is Ext.A3, which remains unchallenged. Hence the same has to be accepted and consequently, the entire liability has to be fixed upon the 1st respondent, the driver of the car. Therefore the said issue is decided on the basis of the same and the contrary finding entered by the Tribunal in this regard attributing 40% contributed negligence upon the deceased in this case is hereby set aside.

9. The next question that arises for consideration is the

quantum of compensation. It is discernible from the records that the Tribunal has fixed the monthly income as rupees Rs.11,625/- which is based on the pension that the deceased was getting at the relevant time. The said assessment appears to be reasonable and therefore, I do not find any necessity to modify the same. The other parameters adopted by the Tribunal such as the multiplier

and the deduction towards personal expenses were also reasonable.

10. As far as the personal expenses are concerned, the

deduction made by the Tribunal was one-third considering the fact that among the appellants, only the 1st appellant was actually dependent upon him. It is a probable finding and therefore, I do not find any scope for modifying the amount awarded under the head of loss of dependency.

11. However, some modification is required under the

heads of loss of estate, funeral expenses and loss of consortium, in the light of various decisions rendered by the Honourable Supreme Court in this regard. As far as the amounts awarded by the Tribunal under the head of loss of estate and funeral expenses are concerned, the same were at the rate of Rs.5,000/- each, whereas the actual amount should have been Rs.15,000/- each in the light of

National Insurance Company Ltd. v. Pranay Sethi [2017 (4) KLT 662 (SC)]. Therefore Rs.10,000/- each is awarded under both the said heads.

12. The next head which requires consideration is the loss

of consortium. In the light of Magma General Insurance Co.Ltd. v. Nanu Ram & Others [2018 (3) KLT Online 3095 (SC)] and United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur [(2021) 11 SCC 780], all the appellants, being the wife and children of the deceased, are entitled to compensation at the rate of Rs.40,000/- each, thereby making out a total sum of Rs.200,000/-. In the award, the Tribunal awarded Rs.10,000/- towards loss of consortium and a further sum of rupees Rs.10,000/- towards loss of love and affection. In Satwinder Kaur (supra) it was categorically

observed that when compensation is awarded for loss of consortium, no further compensation needs to be granted for loss of love and affection. Therefore Rs.10,000/- awarded under the said head could be adjusted against the amount fixed by this Court towards loss of consortium. Accordingly, the additional amount under the head of loss of consortium comes to Rs.1,80,000/-. Thus, the total additional compensation is determined as Rs.200,000/- [180000+10000+10000] and the total compensation the appellants are entitled to is determined as Rs.7,04,560/- (200,000 + 5,04,560). In the result, this appeal is allowed. The finding of the Motor

Accidents Claims Tribunal, Ottapalam in the award dated 23.04.2012 in O.P(M.V) 500/2010 attributing 40% of contributory negligence upon the deceased is hereby set aside by holding that, the accident occurred solely due to the negligence of the 1st respondent in driving the car. As the said vehicle was covered with a valid insurance policy, the 3rd respondent is held liable to pay the compensation. The quantum of compensation is reassessed as Rs.7,04,560/- (Rupees seven lakhs four thousand five hundred and sixty only) and the said amount shall be deposited by the 3rd respondent with interest at the rate as ordered by the Tribunal and with proportionate costs within a period of 3 months from the date of receipt of copy of the judgment after adjusting the amounts already deposited. However, it is clarified that, as the delay of 361 days in filing the appeal was condoned by this Court

subject to the condition that the appellant shall not be entitled to interest for the said period, the 3rd respondent shall be at liberty to exclude the said period while computing the interest on the additional compensation. It is further ordered that, the claimants shall furnish the details of PAN card, Aadhar Card and Bank details to enable the insurance company to make the deposit as ordered above within a period of two months from the receipt of a copy of this judgment. In case, they fail to furnish the said details, it shall be open for the insurance company to deposit the said amount before the Tribunal.

Sd/- ZIYAD RAHMAN A.A. JUDGE rpk

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