

Elizabeth vs Chithra

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Court : Kerala

Decided On : Nov-09-2023

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

Appeal No. : MACA/1248/2015

Appellant : Elizabeth

Respondent : Chithra

Advocate for Pet/Ap. : Sri. K.A. Hashim

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
THURSDAY, THE 9TH DAY OF NOVEMBER 2023 / 18TH KARTHIKA,
1945 MACA NO. 1248 OF 2015 AGAINST THE AWARD DATED
29.01.2015 IN OP(MV)NO.564/2011 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL,KOTTAYAM APPELLANTS/RESPONDENT NO.4 AND
ADDITIONAL RESPONDENT NO.5: 1 ELIZABETH,
W/O.NELSON,PUTHENPURACKAL(H), PAMPANAR(P.O),
PEERUMEDU. 2 NOBLE.N, S/O. NELSON,PUTHENPURACKAL(H),
PAMPANAR(P.O), PEERUMERU. BY ADV.SRI.THOMAS ABRAHAM

(NILACKAPPILLIL) RESPONDENTS/PETITIONER AND
RESPONDENTS:

1 CHITHRA, W/O ROBIN, PUTHENPURACKAL(H), OLD
PAMPANAR,PAMPANAR(PO),PEERUMEDU, NOW RESIDING AT
ANANDA BHAVAN,KALLAR PUTHUVEL
BHAGOM,PAMPANAR(PO),PEERUMEDU, PIN-685 531. 2 STEPHEN,
PARACKAL(H), KARADIKUZH Y PUTHEVEL BHAGOM,
PEERUMEDU,PIN-685 531. 3 THE NEW INDIA ASSURANCE
COMPANY LTD., KOTTAYAM,KOTTAYAM DISTRICT, PIN-686 001. BY
ADVS. K.A.HASHIM SRI.PMM.NAJEEB KHAN PMM.NAJEEB KHAN
THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR

ADMISSION ON 09.11.2023, ALONG WITH MACA.2738/2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
THURSDAY, THE 9TH DAY OF NOVEMBER 2023 / 18TH KARTHIKA,
1945 AGAINST THE AWARD DATED 29.01.2015 IN
OP(MV)NO.564/2011 OF MOTOR ACCIDENT CLAIMS TRIBUNAL
,KOTTAYAM APPELLANT/PETITIONER: CHITHRA, AGED 23 YEARS,
W/O.ROBIN, PUTHENPURACKAL HOSUE, OLD PAMPANAR,
PAMPANAR P.O., PEERUMEDU NOW RESIDING AT ANANDA
BHAVAN, KALLAR PUTHUVEL BHAGOM, PAMPANAR P.O.,
PEERUMEDU. BY ADVS. SRI.K.A.HASHIM SRI.M.I.ISMAIL
RESPONDENTS/RESPONDENTS:

1 STEPHEN, PARAKAL HOSUE, KARADIKUZH Y PUTHUVEL
BHAGOM, PEERUMEDU, PIN:685 5313. 2 THE NEW INDIA
ASSURANCE CO. LTD., KOTTAYAM, PIN 686 001. 3 NELSON (DIED),
PUTHENPURACKAL HOUSE, PAMPANAR P.O., PEERUMEDU (DIED)
, PIN:685531. 4 ELIZABETH, AGED 48 YEARS, PUTHENPURACKAL

HOUSE, OLD PAMPANAR, PAMPANAR P.O., PEERUMEDU, PIN:685 531. 5 NOBLE N., AGED 28 YEARS, PUTHENPURACKAL HOUSE, OLD PAMPANAR, PAMPANAR P.O., PEERUMEDU, PIN:685 531. BY ADVS. SRI.PMM.NAJEEB KHAN THOMAS ABRAHAM (NILACKAPPILLIL)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 09.11.2023, ALONG WITH MACA.1248/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

M.A.C.A Nos.1248 & 2738 of 2015 These appeals are arising from O.P.(MV).No.564 of 2011 on the file of the Motor Accidents Claims Tribunal, Kottayam. The claim petition was submitted by the appellant in M.A.C.A.No.2738 of 2015, seeking compensation for the death of one Robin due to the injuries sustained to him in a motor accident that occurred on 11.08.2010.

2. In the said claim petition, the petitioner claimed that she is the wife of the deceased. The 3 rd and 4th respondents are the

parents of the deceased. For convenience, the parties in these appeals are hereinafter referred to as per their respective ranks in the claim petition. During the pendency of the claim petition, the 3rd respondent died, and the 5 th respondent was impleaded as the legal heir of the deceased 3 rd respondent, apart from the 4th respondent.

3. According to the claimant, the accident occurred when

the auto-rickshaw in which the deceased was travelling capsized due to the negligent driving of the said vehicle by the 1 st respondent and due to its impact, the said Robin sustained severe

injuries. Thereafter, he was taken to the Taluk Headquarters Hospital, Peerumedu and later to Medical College Hospital, Kottayam, where he succumbed to the injuries on 23.08.2010 while undergoing treatment. He was aged 24 years and

was working as a driver with a monthly income of Rs.7,500/-. The compensation was claimed in such circumstances.

4. The 2nd respondent filed a written statement admitting the coverage of policy in respect of the auto-rickshaw but denied the liability on various grounds. Quantum of compensation was also disputed. Respondents 3 and 4 filed a written statement contending that the deceased Robin was a bachelor. He did not marry the petitioner. There was no relationship between the petitioner and the deceased, and they never lived under the same

roof as husband and wife. It was also pointed out that, earlier, respondents 3 and 4 filed a claim petition before the Motor Accidents Claims Tribunal, Thodupuzha, as O.P(MV).No.163 of 2011, seeking compensation for the death of said Robin, and later on, knowing about the filing of this claim petition, they did not pursue the said claim petition and appeared in this case. Later, on the death of the 3rd respondent, the 5th respondent was impleaded, and he filed a written statement incorporating the very same contentions in the

written statement of respondents 3 and 4.

5. The evidence in this case consists of Exts.A1 to A5 from

the side of the claimant and Ext.B1 policy certificate from the side of the respondents. After the trial, the Tribunal concluded that the accident occurred due to negligence on the part of the driver of the auto-rickshaw and hence, the Insurance Company was held liable to pay the compensation. The quantum of compensation was fixed as Rs.10,34,000/- and was directed to pay the 2 nd respondent with interest at the rate of 8.5% per annum from the date of petition till

realisation with proportionate costs. The contention of respondents 3 and 4 as to the lack of any relationship between the petitioner and the deceased was rejected by relying upon Ext.A4 inquest report, and the compensation was directed to be apportioned between a 75:25 ratio between the petitioner and respondents 4 and 5. M.A.C.A.No.2738 of 2015 is filed by the petitioner seeking enhancement of compensation, whereas M.A.C.A.No.1248 of 2015 is filed by respondents 4 and 5

challenging directing in the award granting compensation to the claimant.

6. Heard Sri. K.A. Hashim, learned counsel for the petitioner, Sri.Thomas Abraham, learned counsel for the respondents 4 and 5 in the claim petition and Sri.PMM Najeed Khan, learned counsel for the 2nd respondent Insurance Company.

7. The main dispute in this case relates to the

apportionment and awarding of compensation to the claimant. In the written statement submitted by respondents 3, 4 and 5, they raised a specific contention that the petitioner in the claim petition was not the legally wedded wife of the deceased, and they never resided under one roof as husband and wife. The petitioner relied on the Ext.A4 inquest report to establish the relationship between the parties. Of course, in Ext.A4 inquest report, the name of the petitioner has been referred to as the wife of the deceased. In the said inquest report, the statements of some of the relatives as well as the neighbours of the deceased were recorded, and as per the same, the petitioner was residing along with respondents 3 and 5

as the wife of the deceased. However, apart from the inquest report, there are absolutely no documents indicating the relationship between the parties. Since the relationship between the petitioner and the deceased is seriously disputed by respondents 3 and 4, the proper course that ought to have been adopted by the tribunal was to permit the parties to adduce evidence in this regard. In this case, I.A.No.1742 of 2014 was

submitted by respondents 4 and 5 for issuing summons to witnesses No.1 and 2 shown in the witnesses list submitted by them, who were the SI of Police, Peerumedu Police Station and the Village Officer of Peerumedu. The relevance of the said witnesses was that the Ext.A4 inquest report was prepared by the SI of Police, Peerumedu. The Village Officer was sought to be examined to show the relationship, if any, between the petitioner and the deceased. However, it is discernible from the records that the said

IA was dismissed by the Tribunal on 28.05.2014. The reasons stated by the Tribunal for rejecting the said application was that, on an earlier occasion, IA No.5971/2013 was filed by the fourth respondent for reopening the evidence for examining the

witnesses. The said application was allowed by reopening the evidence subject to a deposit of Rs.1000/- and on the condition that the said respondents should produce the witnesses without summons through the court. However, on the subsequent posting date, they could not procure the presence of the said witnesses and the prayer to issue summons was dismissed on that ground. After examining the materials placed on record, I am of the view that, since the relationship between the petitioner and the deceased was seriously disputed at the instance of respondents 3, 4 and 5,

permission should have been granted to the parties to let in evidence to substantiate their contentions. Even though it is discernible from the order dated 28.05.2014 in IA No.1742/2014 that they were permitted to produce the witnesses, the court directed them to secure their presence without issuance of summons. Since the witnesses sought to be examined were official witnesses, the course adopted by the Tribunal insisting on securing their presence without the summons was not at all proper. The reasons which prompted the tribunal to compel respondents 4 and 5 to secure the presence of the said official witnesses without summons are also not discernible from the records.

8. As far as the petitioner is concerned, apart from relying

on the Ext.A4 inquest report, no attempt was made to adduce any evidence to substantiate the relationship between her and the deceased Robin. Even though there were serious objections raised by respondents 3, 4 and 5 through their written statements regarding the said relationship, she did not care to mount the box. Ext.A4 inquest report by itself cannot be treated as a conclusive proof of the relationship between the petitioner and the deceased, in the absence of any other materials supporting the contents of

the same. Of course, it is true that it contained statements of certain witnesses, referring to the relationship between the petitioner and the deceased as that of husband and wife. However, without examining any of the persons who gave the statement or who were having acquaintance to the relationship between the parties, the contents of the mahazer as such cannot be accepted. Therefore, the decision taken by the Tribunal by solely relying upon the Ext.A4 inquest report was not at all proper. In such circumstances, I am of the view that the matter has to be considered afresh after giving an opportunity to the parties concerned to adduce evidence in support of their respective contentions.

9. As regards the quantum of compensation, I am of the

view that since the matter is being remanded, the contention regarding the quantum can also be considered by the Tribunal afresh based on evidence to be adduced by the respective parties.

10. Accordingly, these appeals are disposed of by setting

aside the award dated 29.01.2015 passed by the Motor Accidents Claims Tribunal, Kottayam, in OP(MV)NO.564 of 2011 and the matter is remanded back to the Tribunal for fresh consideration. The question as to the relationship between the petitioner and the deceased, and also relating to the apportionment to be made between the parties, can be decided by the tribunal afresh based on the evidence to be adduced by the respective parties. Apart from the above, the quantum of compensation can also be determined, and all the parties shall be at liberty to adduce such further evidence as they deem fit to substantiate their respective contentions. The parties are directed to appear before the tribunal on 01.12.2023. Considering the fact that the claim petition is of the year 2011, every endeavour shall be taken by the Tribunal to complete the proceedings in the claim petition as expeditiously as possible, at any rate, within a period of six months from 01.12.2023. Sd/- ZIYAD RAHMAN, A.A, JUDGE DG

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