



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 24TH DAY OF JANUARY 2024 / 4TH MAGHA, 1945

MACA NO. 2534 OF 2012

AGAINST THE ORDER/JUDGMENT OPMAC 424/2011 OF MOTOR ACCIDENT CLAIMS

TRIBUNAL TIRUR

APPELLANT/PETITIONER:

- 1 MAMMUTTY
S/O.MOHAMMED, KURUKOTTATHIL HOUSE,
POST PERUMBADAPPU, MALAPPURAM DISTRICT.
- 2 SAINABA
W/O.MAMMUTTY, KURUKOTTATHIL HOUSE,
POST PERUMBADAPPU, MALAPPURAM DISTRICT.
- 3 NAVAS
S/O.MAMMUTTY, KURUKOTTATHIL HOUSE,
POST PERUMBADAPPU, MALAPPURAM DISTRICT.
- 4 MOHAMMED NIMESH
S/O.MAMMUTTY, KURUKOTTATHIL HOUSE,
POST PERUMBADAPPU, MALAPPURAM DISTRICT.
- 5 MOHAMMED NIHAD
S/O.MAMMUTTY, KURUKOTTATHIL HOUSE,
POST PERUMBADAPPU, MALAPPURAM DISTRICT(MINOR
REPRESENTED BY FATHER 1ST APPELLANT, MAMMUTTY).
BY ADV SRI.C.M.MOHAMMED IQUABAL

RESPONDENTS:

- 1 PRABHAKARAN
S/O.PARVATHI, PULIPARAMBIL HOUSE,
VAKA, MATTAM, THRISSUR DISTRICT - 675051
- 2 UNNIKRISHNAN SO.NARAYANAN VELUTHEDATH HOUSE
VELLANIKKARA VILLAGE, THRISSUR DISTRICT - 675051
- 3 THE ORIENTAL INSURANCE Co. Ltd.,
THRISSUR DISTRICT - 675051
BY ADVS.
SMT.DHANYA P.ASHOKAN
S. MUHAMMAD ALIKHAN
SRI.A.R.GEORGE
SRI.M.R.VENUGOPAL
ADV. P JACOB MATHEW - R7, ADV. MUHAMMED ALIKHAN- R6,
ADV. C M MOHAMMED IQUABAL- R1-R5

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 24.01.2024, ALONG WITH MACA.37/2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:



MACA Nos.2534 OF 2012 & 37 OF 2022

2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 24TH DAY OF JANUARY 2024 / 4TH MAGHA, 1945

MACA NO. 37 OF 2022

AGAINST THE ORDER/JUDGMENT OPMAC 424/2011 OF MOTOR ACCIDENT

CLAIMS TRIBUNAL TIRUR

APPELLANT/1st RESPONDENT:

P.K.PRABHAKUMAR
AGED 50 YEARS
(NAME MISTAKENLY SHOWN AS PRABHAKARAN IN THE
JUDGMENT) S/O.PRABHAVATHI, PULLIPARAMBIL HOUSE,
P.O.VAKA, ELAVALLY VILLAGE,
MATTAM, CHAVAKKAD TALUK, THRISSUR-680 602
BY ADVS.
M.R.VENUGOPAL
DHANYA P.ASHOKAN
S. MUHAMMAD ALIKHAN

RESPONDENT/PETITIONERS AND RESPONDENTS Nos. 2 & 3:

- 1 MAMMUTTY
AGED 72 YEARS
S/O. MOHAMED, KURUKKOTTATHIL HOUSE,
P.O.PERUMBADAPPU, MALAPPURAM DISTRICT-679 580
- 2 SAINABA
AGED 58 YEARS
W/O. MAMMUTTY, KURUKKOTTATHIL HOUSE,
P.O.PERUMBADAPPU, MALAPPURAM DISTRICT-679 580
- 3 NAVAS
AGED 42 YEARS
S/O. MAMMUTTY, KURUKKOTTATHIL HOUSE,
P.O.PERUMBADAPPU, MALAPPURAM DISTRICT-679 580
- 4 MOHAMMED NIMESH
AGED 35 YEARS
S/O. MAMMUTTY, KURUKKOTTATHIL HOUSE,
P.O.PERUMBADAPPU,
MALAPPURAM DISTRICT-679 580



MACA Nos.2534 OF 2012 & 37 OF 2022

3

- 5 MOHAMMED NIHAD
AGED 23 YEARS
S/O. MAMMUTTY, KURUKKOTTATHIL HOUSE,
P.O.PERUMBADAPPU, MALAPPURAM DISTRICT-679 580
- 6 UNNIKRISHNAN
AGED 39 YEARS
S/O.NARAYANAN, VELUTHEDATH HOUSE, WEST
VELLANIKKARA, P.O., MADAKKATHARA, THRISSUR
DISTRICT-680 651
- 7 THE ORIENTAL INSURANCE COMPANY LTD.,
3RD FLOOR, MAHESWARI BUILDING, MG ROAD, THRISSUR,
KERALA-680 001
BY ADVS.
C.M.MOHAMMED IQUBAL
S. MUHAMMAD ALIKHAN
P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 24.01.2024, ALONG WITH MACA.2534/2012, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Both these appeals are arising from OP(MAC) 424/2011 on the files of Motor Accident Claims Tribunal, Tirur. The said claim petition was submitted by the claimants who are the appellants in MACA No.2534/2012, seeking compensation for the death of one Naveed due to the injuries sustained in a motor accident that occurred on 25/02/2010.

2. The 1st and 2nd appellants are the parents of the deceased, whereas the other appellants are his siblings. According to the appellants/claimants, the accident occurred when the motor cycle ridden by the deceased was hit by goods Auto Rickshaw. As a result of the same, he sustained serious injuries and he was taken to Santhi Hospital and from there to Amala Hospital, Thrissur. While undergoing treatment, he passed away. The deceased was aged 21 years at the time of the accident and he was employed as a Sales Executive at Born Marrow Event



Management, Poonkunnam, Thrissur with a monthly income of Rs.6000/-. The claim petition was submitted in such circumstances for seeking compensation.

3. The 3rd respondent in the claim petition, the insurer of the said good auto rickshaw, filed a written statement admitting valid insurance coverage for the said vehicle. However, it was contented that the said goods auto rickshaw did not have a valid permit to ply through the public road, and hence a contention of violation of policy conditions was raised.

4. The evidence in this case consists of the oral testimonies of PWS 1 and 2 and as documentary evidence Ext. A1 to A13 were marked. No evidence was adduced from the side of the respondent in the claim petition.

5. After the trial, the Tribunal came to the conclusion that the accident occurred due to the negligence on the part of the driver of the auto



rickshaw, and being the insurer, the 3rd respondent in the claim petition was held liable to pay the compensation. The quantum of compensation was fixed as Rs.2,96,300/- and the said amount was directed to be deposited by the 3rd respondent-insurer with interest at the rate of 7.5% per annum from the date of petition till realisation with a cost of Rs.4,000/-. The Tribunal also found that there was violation of policy conditions at the instance of the registered owner of the said vehicle, as the goods auto rickshaw was being plied without a valid permit. Therefore, the 3rd respondent/insurer was permitted to recover the compensation from the 1st and 2nd respondents in the claim petition, after satisfaction of the award. MACA 2537/2012 was filed by the petitioners seeking enhancement of compensation, whereas, MACA 37/2022 was filed by the 1st respondent in the claim petition, the registered owner of the goods vehicle, challenging the order permitting the 3rd respondent insurer, to recover



the compensation from him and the 2nd respondent in the claim petition.

6. Heard Sri.C.M.Muhammed Iquabal, learned counsel appearing for the petitioners in the claim petition, the appellants in MACA 2534/2012, Smt.Dhanya P. Ashokan, learned counsel appearing for the 1st respondent and the appellant in MACA 37/2022, Sri.A.R.George, learned counsel appearing for the 3rd respondent in the claim petition, the insurer of the goods auto rickshaw in MACA 2534/2012 and Sri.Jacob Mathew, learned counsel appearing for the insurer in MACA 37/2022.

7. As the 1st respondent/registered owner raised a challenge against the right of recovery granted to the insurer, the said question has to be considered first. In this appeal, the specific contention raised by the appellant/1st respondent is that, considering the nature of the goods vehicle, the permit is not a mandatory requirement. The learned counsel for the 1st respondent brought the



attention of this Court to Section 66(3)(i) of the Motor Vehicles Act, 1988. Section 66(1) deals with the necessity of permits, whereas Section 66(3) contemplates the situations where the stipulations in sub-section (1) of the Section 66 shall not be applicable. Among the circumstances mentioned in Sub Section (3), one is relating to those goods vehicle, the gross vehicle weight of which does not exceed 3000 Kilograms. In this case, the learned counsel produced a copy of the registration certificate as Annexure A1 and the Insurance Policy Certificate dated 21/02/2010 as Annexure A2. In this case, to substantiate the unladen as well as the gross weight of the said vehicle, the 1st respondent places reliance upon the copy of the Registration Certificate produced as Annexure A1 and the Policy Certificate produced as Annexure A2. From Annexure A2, all the specifications of the vehicle have been clearly mentioned, and one among the said specifications is gross vehicle weight,



which was shown as 975 Kilograms. The insurance company admits the said policy, and there is no dispute raised as to the entries relating to the specifications of the said vehicle. In such circumstances, the said documents can be accepted to examine the gross vehicle weight of the goods auto rickshaw involved in the accident. As rightly pointed out by the learned counsel for the 1st respondent, by virtue of Section 66(3)(i) of the Motor Vehicles Act, 1988, there is a specific exclusion for the goods vehicle with gross vehicle weight less than 3000 Kilograms from obtaining permit. Since there is a statutory exemption provided from obtaining permit for such kind of vehicles, the absence of such permit cannot be treated as a violation of the policy conditions, as the obligation of the insured while plying the vehicle is to ensure the compliance of the statutory stipulations contained in Motor Vehicles Act. Since the lack of a permit will not attract



any violation of statutory provisions by virtue of the above, the finding of the Tribunal that the 1st respondent violated the terms and conditions of the policy would not be sustainable. Therefore, the said finding is set aside and consequently, the right of recovery granted to the 3rd respondent/Insurance company, is also set aside.

8. The next question to be considered relates to the quantum of compensation, which is a subject matter in MACA 2534/2012. The deceased was aged 21 years at the time of the accident, and according to the claimants, he was drawing a salary of Rs.6,000/- from his employment as a Sales Executive in a private Company. To substantiate the same, Ext.A7 Certificate was relied on, but the Tribunal did not accept the same, and the monthly income was fixed as Rs.4,000/-. It is to be noted that this is an accident that occurred in the year 2010. In **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd [(2011) 13 SCC 236]**' Case, the



Hon'ble Supreme Court was pleased to take the monthly income of an ordinary employee even without any evidence as Rs.4,500/- for the year 2004. Therefore, the monthly income of Rs.6,000/- for the year 2010 appears to be reasonable, and hence I do not find any sustainable grounds to discard the certificate. Accordingly, the monthly income is taken as Rs.6,000/-.

9. As the deceased was aged 21 years, an addition of 40% of the monthly income is to be made towards future prospects, and the deduction towards personal expenses should be 50%, as the deceased died as a bachelor. The multiplier applicable is 18. Thus, while reassessing the compensation for loss of dependency with the above criteria, the amount would come to Rs.9,07,200/- $[(6000+40\%) \times 12 \times 18 \times 1/2]$. The amount already awarded by the Tribunal is Rs.2,64,000/- and thus, the additional compensation would come to Rs.6,43,200/-.



7. The amount awarded by the Tribunal towards funeral expenses was only Rs.5,000/- and in the light of **National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680]**, a further sum of Rs.10,000/- is awarded. No amount is seen awarded towards loss of estate and in the light of **Pranay Sethi (Supra)**, an amount of Rs.15,000/- is awarded.

8. The next head which requires attention is compensation for loss of consortium. As per **Magma General Insurance Co.Ltd. v. Nanu Ram alias Churu Ram [(2018) 18 SCC 130]**, and **United India Insurance Co Ltd V. Satinder Kaur @ Satwinder Kaur and other [2020 (3) KHC 760]**, the 1st and 2nd appellants, being the parents of the deceased are entitled to compensation under the said head at the rate of Rs.40,000/- each. The learned counsel for the insurer would point out that the Tribunal has already awarded an amount of Rs.5,000/- under love and affection that has to be adjusted against the



compensation for loss of consortium. The said contention has to be accepted in the light of the observations made by the Hon'ble Supreme Court in **Satinder Kaur'** case. Therefore, the additional compensation under the head of loss of consortium would come to Rs.75,000/- Accordingly, the total additional compensation is determined as Rs.7,43,000/- (643000+10000+15000+75000).

In the light of the aforementioned observations and findings, both these appeals are allowed with the following orders:-

- i The award dated 31/07/2012 in OP(MAC) No.424/2011 passed by the Motor Accident Claims Tribunal, Tirur, to the extent it permits the 3rd respondent to recover the compensation from the 1st and 2nd respondents, is set aside.
- ii The quantum of compensation is reassessed and an amount of Rs.7,43,000/- is awarded as an additional to the appellants.



- iii The said additional compensation shall be deposited by the 3rd respondent with interest at the rate as ordered by the Tribunal and proportionate costs within a period of three months from the date of receipt of the copy of this judgment.

Sd/-
ZIYAD RAHMAN A.A.
JUDGE

sms