2025:KER:30132

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

MACA NO. 2076 OF 2012

OPMV NO.1870 OF 2006 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,THALASSERY

APPELLANT/2ND RESPONDENT

THE ORIENTAL INSURANCE CO.LTD.
KANNUR, REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADVS.
SRI.GEORGE CHERIAN (THIRUVALLA)(Sr.)
GEORGE A.CHERIAN

RESPONDENTS/CLAIMANTS/1ST RESPONDENT

1 **C.HAMZA**
S/O. MAMMU, CHAPPARAPADAVU, NOW RESIDING AT CHAVANAPUZHA, P.O.POOMANGALAM, KARIMBAM VIA, PIN-670 001.

2 **THANIYANTAKEEZHIL SARA**
W/O. HAMSA, CHAVANAPUZHA, P.O.POOMANGALAM, KARIMBAM VIA, THALIPARAMBA TALUK, PIN-670 001.

3 **THANIYANTAKEEZHIL IBRAHIM KUTTY**
MOIDEENKUTTY, CHAVANAPUZHA, P.O., POOMANGALAM, KARIMBAM VIA, TALIPARAMBA TALUK, PIN-670 001.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.2.2025, THE COURT ON 08.04.2025, DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

Dated : 8th April, 2025

The 2nd respondent in OP(MV).1870/2006 on the file of the Motor Accidents Claims Tribunal, Thalassery is the appellant. (For the purpose of convenience the parties are hereafter referred to as per their rank before the Tribunal).

2. The petitioners are the parents of a 13 year old boy, who died in a motor vehicle accident that occurred on 19.4.2000. According to the petitioners, on 19.4.2000 at about 1.30 p.m while the boy was travelling along with the 1st respondent, in a tempo van bearing registration No.KL13D/5954 owned and driven by the 1st respondent in a rash and negligent manner, the vehicle met with an accident, the child sustained serious injuries and he succumbed to the injuries on the same day. The 2nd respondent is the insurer of the tempo van.

3. The evidence consists of the oral testimony of PW1 and Exts.A1, A2 and Ext.B1. After evaluating the evidence on record, the Tribunal found that the accident occurred due to the negligence of the 1st respondent and also found that the boy was engaged by the 1st respondent for supplying water to

hotels and houses at Thaliparamba and awarded a compensation of Rs.2,44,500/- and directed the insurer to pay the same.

4. Now the point that arises for consideration is the following:

1) Whether the deceased boy was a gratuitous passenger or a person engaged by the owner?

2) Whether absence of pleading is fatal in a proceeding under S.166 of M.V.Act?

3) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

5. Heard Sri.George Cherian, the learned Senior Counsel appearing for the appellant.

6. The Point: In this case the accident as well as valid policy of the offending vehicle are admitted. One of the arguments raised by the learned Senior counsel for the Insurance Company is that the boy was a gratuitous passenger in the tempo van and as such, the insurer has no liability to indemnify the insured. He has also relied upon the decision of the Hon'ble Supreme Court in **New India Assurance Co.Ltd v. Asha Rani and Others,** (2003) 2 SCC 223, **Manager, National Insurance Company Limited v. Saju P.Paul and Another,** (2013) 2 SCC 41 and a Division Bench of this Court in **New India Assurance Co.Ltd. v. Alekutty Antony,** 2009 (4) KLT

130, in support of his argument.

7. In the decision in **Asha Rani** (supra) the question that arose for consideration was whether the insurer is liable to pay compensation to the dependents of the deceased passenger while the deceased passenger was travelling in a goods vehicle and that the vehicle met with an accident, prior to the amendment of 1994. The above question was answered by the Hon'ble Supreme Court in the negative. In the instant case, the accident occurred on 19.4.2000, after the commencement of the amendment of 1994 and as such, the decision in **Asha Rani** (supra) will not apply to the facts of this case.

8. In the decision in **Saju P.Paul** (supra), the question of law that arose was whether the insurer is liable to pay compensation for the bodily injury caused to the claimant who was travelling in a goods vehicle as a spare driver, though he was employed as a driver in another vehicle owned by the owner of the vehicle under the policy of insurance. The Hon'ble Apex Court found that the deceased in that case was not in any manner engaged in the vehicle that met with the accident but he was employed as a driver in another vehicle owned by the owner of the vehicle. It was also found that the insurer had paid a premium for one driver and one cleaner alone and therefore, a second driver or for that purpose, spare driver was not covered under the policy. The Court also found that merely because he was travelling in the

cabin could not make his case different from any other gratuitous passenger.

9. In **Alekutty Antony** (supra), four persons namely a mason and two headload workers were travelling in a goods vehicle. While the Mason was sitting inside the cabin and others were in platform, the vehicle met with an accident. The question that arose for consideration was whether the persons who were on the platform in the goods vehicle are to be indemnified by the insurer. The Division Bench answered the above question in the negative. However, since the mason engaged by the owner was sitting in the cabin of the vehicle as representative of the owner of the goods, it was held that the insurer is liable to indemnify the owner of the vehicle for the compensation payable to the legal heirs of the deceased mason.

10. In the instant case, the boy was sitting inside the cabin. Now the question remains to be answered is whether he was a gratuitous passenger or was a person engaged by the owner?

11. When the mother of the deceased was examined as PW1 she categorically deposed that the 1st respondent was engaged in supplying drinking water in large plastic tanks for consideration and during holidays her son used to go along with the 1st respondent in his vehicle for helping him in

supplying drinking water to his customers. According to her, during such days the 1st respondent used to pay daily wages of Rs.100/- to the deceased. On the date of the accident also the deceased accompanied the 1st respondent in his vehicle for the aforesaid job and it was at that time the accident occurred. At the time of the accident, he had completed the 8th standard and was awaiting admission to the 9th standard. According to her, the deceased was a bright student and he was also engaged in extra curricular activities. He used to give the wages received from the above job to her. Though during the cross-examination a suggestion was put to to the effect that the boy travelled in the offending vehicle as a gratuitous passenger, she denied the said suggestion. Therefore, from the evidence of PW1 it is crystal clear that the deceased travelled in the offending vehicle as engaged by the 1st respondent to help him in supplying drinking water to his customers.

12. The learned Senior counsel for the insurer invited my attention to the effect that in the claim petition there is no specific pleading to the effect that the deceased travelled in the vehicle as an employee of the 1st respondent and argued that, in the absence of any such pleading, it is to be treated that the deceased was a gratuitous passenger.

13. The law is well settled that in a proceeding under Section 166 of

the M.V.Act the Tribunal has a duty to award just and reasonable compensation to the victims of road traffic accidents. Further, sub-section (6) of Section 158 of the M.V.Act states that :

> *"As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."*

14. As per sub-section (4) of Section 166, the Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act.

15. In the decision in **Raj Rani and Ors. v. Oriental Insurance Co.Ltd and Ors. (2009) 13 SCC 654** in paragraph 13, the Apex Court held that :-

> *"13. It is not necessary in a proceeding under the Motor Vehicles Act to go by any rules of pleadings or evidence. Section 166 of the Act speaks about grant of just compensation. The court's duty being to award just compensation, it will try to arrive at the said finding irrespective of the*

fact as to whether any plea in that behalf was raised by the claimant or not. "

16. In the decision in **Ningamma and Ors v. United India Insurance Co.Ltd., AIR 2009 SC 3056** in paragraph 25 the Apex Court held that :

"25.Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not."

17. In the decision in **United India Insurance Company Ltd. v. Shila Datta and Ors, AIR 2012 SC 86, [SC]** a three Judge Bench of the Hon'ble Supreme Court held that rule of pleadings does not apply to proceedings prescribed under the M.V Act. In paragraph 5 the Apex Court held that :

"A claim petition for compensation in regard to a motor accident (filed by the injured or in case of death, by the dependent family members) before the Motor Accident Claims Tribunal constituted under section 165 of the Act is neither a suit nor an adversarial lis in the traditional sense. It is a proceedings in terms of and regulated by the provisions of Chapter XII of the Act which is a complete Code in itself. We may in this context refer to the following significant aspects in regard to the Tribunals and

determination of compensation by Tribunals:

(i) A proceedings for award of compensation in regard to a motor accident before the Tribunal can be initiated either on an application for compensation made by the persons aggrieved (claimants) under section 166(1)or section 163A of the Act or suo moto by the Tribunal, by treating any report of accident (forwarded to the tribunal under section 158 (6) of the Act as an application for compensation under Section 166(4) of the Act.

(ii) The rules of pleadings do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo moto initiated by the Tribunal."

18. In the decision in The **New India Assurance Co.Ltd v. Safder Ali and Ors. MANU/JK/1254/2023,** the Jammu and Kashmir High Court also held that in a proceeding under the Motor Vehicles Act, strict rules of proceedings are not applicable. In paragraph 8, the Court held that :

"It is profitable to note that, in law, pleadings and proof are distinct and different from each other and in a claim petition filed under the provisions of Motor Vehicles Act, the strict rules of pleadings are not applicable suggesting that it is not imperative and necessary for a claimant to plead specifically all the facts in the claim petition. "

19. Therefore, it can be seen that strict rules of pleadings are not applicable in a proceeding under Section 166 of the M.V.Act. Further, it is to be noted that at the time of the accident, the deceased was a 13 year old boy engaged in daily wage work, to help his mother, being her elder son. In the above circumstances, for the sole reason that there is no specific pleading in

the claim petition to the effect that he was engaged as an employee of the 1st respondent in his vehicle, his dependents cannot be denied the legitimate compensation due to them.

20. In this context it is also to be noted that at the time of the accident, drinking water in plastic tanks were transported in the offending lorry and there was nobody else in the said vehicle as employee of the 1st respondent to help him supplying drinking water from the lorry to his customers. The above circumstance also probabilises the evidence of PW1 that at the time of the accident, the deceased was travelling along with the 1st respondent not as a gratuitous passenger, but as an employee of the 1st respondent. The respondents also have not adduced any evidence to controvert the above evidence of PW1 and as such, it is to be held that at the time of the accident the deceased was travelling in the cabin of the offending vehicle along with the 1st respondent as his employee and as such, the 2nd respondent/insurer cannot take a contention that they are not liable to indemnify the insured, the compensation legitimately due to the dependents of the deceased.

21. With regard to the notional income to be taken for quantifying the compensation to be awarded to the dependents of a child between the age group 6 to 15, in the decision in **National Insurance Company Ltd. and**

Ors. v. K.K.Assaignar and Others, 2019 (4) KLT 39, a learned Single Judge of this Court after relying upon various decisions, formulated a schedule, taking into account the fact of inflation on the real money value. As per the above decision, during the year 2000-2001, the annual notional income will come to Rs.35,000/-. Further, as per the above decision the multiplier to be applied is 15, and one-third of the income is to be deducted towards personal and living expense. Accordingly, the compensation due to the petitioners on loss of dependency, as per the above decision will come to only Rs.3,50,000/-.

22. In the decision in **Kishan Gopal and Another v. Lala and Others, (2014) 1 SCC 244,** in the case of a ten year old child who died in a motor vehicle accident that occurred in the year 1992, the Hon'ble Apex Court has fixed his notional income at Rs.30,000/- and the multiplier of 15 was applied. However, in the decision in **Kusmi Devi v. Md.Kasim, 2023 ACJ 1658**, in the case of a three year old child who died in a motor vehicle accident in the year 1994, the Hon'ble Supreme Court has awarded a total compensation of Rs.6,00,000/- which includes Rs.5,00,000/- awarded by the High Court and an additional sum of Rs.1,00,000/- awarded by the Apex Court on the head 'global enhancement'.

23. Therefore, considering the entire facts, I hold that in this case also by applying the decision of the Hon'ble Supreme Court in **Kusmi Devi** (supra) a sum of Rs.6,00,000/- can be awarded to the dependents of the deceased child, on all non-pecuniary heads taken together. In addition to the same, a sum of Rs.2000/- is awarded towards transportation expenses and Rs.500/- towards damage to clothing. Therefore, the total compensation due to the petitioners will come to Rs.6,02,500 [6,00,000 + 2000 + 500].

24. I am aware that this is an appeal filed by the insurer and that the claimants have not filed any appeal or cross-objection. Even in such cases, this court has a duty to ensure that just compensation is awarded to the affected person or the claimants (**Surekha and Others v. Santhosh and Others**, 2020 ACJ 2156).

25. In the result, this Appeal is dismissed. At the same time, the quantum of compensation due to the petitioners is enhanced to Rs.6,02,500/-. The 2nd respondent is directed to deposit a total sum of Rs.6,02,500/- (Rupees six lakh two thousand five hundred Only), less the amount already deposited, if any, along with interest @ 8% from the date of the petition till realisation/deposit, excluding interest for a period of 155 days, the period of delay in filing the appeal, within a period of two months from today.

On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioners, in the ratio fixed by the Tribunal, excluding excess court fee payable, if any, without delay, as per rules.

Sd/-

C.Pratheep Kumar, Judge

Mrcs/10.3.25