IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, VATAKARA

Present: Sri. C.K. Somarajan, B.Sc, LL.B
Motor Accidents Claims Tribunal
Friday, 28th day of March, 2014
7th day of Chaithra, 1936. S.E

O.P.(MV) 549/2010

Between:-

1 Kunhayisa, W/o. Ammed, Aged 43 years,
Manakandathil Veedu, Muthuvannacha (PO),
Kuttiady (Via), Koyilandy Taluk, Kozhikode Distirct.

2 Abdul Salam, S/o. Ammed, aged 39 years,
Koolikunnummal Veedu, Velom Peruvayal (PO),
Kuttiady (Via), Vatakara Taluk, Kozhikode District.

3 Safiya, W/o. Ammed, aged 35 years,
Nagath Veedu, Velom Peruvayal (PO),
Kuttiady (Via), Vatakara Taluk, Kozhikode District.

Petitioners

And:-

1 Nabeesath Beevi, W/o. Moythu, age not known,
Kakkidavath House, Velom Peruvayal (PO),
Kuttiady , Kozhikode.

2 Habeeb, S/o. Pocker, aged 22 years,
Karuvady House, Velom Peruvayal (PO),
Kuttiady (Via), Kozhikode.

3 Bajaj Allianz General Insurance Company Limited,
5th floor, M' Sons Arcade, Cherooty Road,
Calicut.

Respondents

This petition coming on 4th day of April, 2013, for final hearing before me in the presence of Sri. R. Ratheesh Kumar, Advocate for Petitioner and of Sri. E. Vidya, Advocate for 1st respondent and of Sri. T.K. Pavithran, Advocate for 2nd respondent and of Sri. Thomas Mathew, Advocate for 3rd respondent and having stood over to this day for consideration, this Tribunal passed the following:

AWARD

This is a petition filed under section 140 and 166 of the MV Act 1988 by the petitioners seeking compensation from the respondents 1 to 3 for the death of their mother Pathu.

2 The allegation in support of the petitioners claim is that on 29-01-2010 around 5.30 p.m., while the deceased Pathu was proceeding through the margin of the public road at Parathilmukku, Koolikunnu, the most negligently driven goods carriage autorikshaw by the 2nd respondent bearing Reg. KL-18E- 4503 knocked down her hence she sustained fatal injuries. Though she was taken to the hospital while she was undergoing treatment there due to the gravity of the injuries sustained to her, she succumbed to the injuries on 02/02/2010. Therefore claiming compensation from the respondent 1 to 3 the owner, driver and the insurer of the offending vehicle this claim petition is filed.

3 Though the 1st and the 2nd respondents were represented through a counsel they did not resisted the claim petition. In the written statement of the 3rd respondent they admits that the offending vehicle was validly insured with them at the time of the accident. They disputed the cause of the accident the age of the deceased, her occupation and income etc. as stated in the petition. According to them the negligence on the part of the deceased in crossing the road has lead to the accident. They got a plea that the 2nd respondent driver of the offending vehicle was not having a valid driving license to drive the insured vehicle and the 1st respondent owner has permitted the 2nd respondent unlicensed person to drive the insured vehicle there by committed violation to the terms and conditions of the insurance

policy as such they are not liable to compensate the petitioner. According to them the compensation claimed on various heads by the petitioners are exorbitant.

4 The 3rd respondent insurer was permitted the contest the claim petition on all spectrum u/s 170 of MV Act.

5 Based on the plea of both sided the following issues were settled for trail:-

1.Whether Pathu has sustained fatal injuries on account of the rash and negligent driving of the goods carriage autorikshaw by the 2nd respondent bearing Reg. KL- 18E- 4503?

2.whether the offending Motor cycle was insured with the 3rd respondent?

3.Is issue No. 1 to 3 are proved to what amount the petitioners are entitled as compensation and from whom?

4.Relief and Cost?

6 Heard both sides

7 No oral evidence is adduced in support of the claim of the petitioner and Exts.A1 to A6 were marked on their side,the evidence was closed. The contesting 3rd respondent had marked Ext.B1 and B2.

8 **<u>Issue Nos. 1 and 2</u>**

The evidence placed by the claimants coupled with the facts disclosed in Ext.A1 FIR and A4 final report when considered in its legal entity, it can be said that the claimants have established that on account of the rash and negligent driving of the offending vehicle by the 2nd respondent the accident took place, in which Pathu has received fatal injuries which eventually lead to her death. As per Ext.A2 the postmortem report the deceased died due to **head injury.**

9 It appears from the records that the offending vehicle stood insured with the 3rd respondent and they raised a plea of breach of conditions of the insurance policy in plying the vehicle. According to them the 2nd respondent has not having a valid driving license to drive the insured vehicle and what is produced before the police by the 2nd respondent as Ext.B1 was a fake driving license. According to them when the driving license particulars in respect of the license no. 4/1521/2007 was obtained from the RTA, Alappuzha it appears that it was related to one Amal.M of Kalavur Alappuzha this is suggestive of an indication that the 2nd respondent was holding a forged/fake driving license and the 1st respondent owner has knowingly entrusted his vehicle to the 2nd respondent an unlicensed person to drive it who was holding a fake driving license. In such a circumstance in view of the dictum held in **National Insurance Co. Ltd. Vs Swrang Singh and others 2004 ACJ 1** it can be held that the 3rd respondent cannot avoid the liability in terms of section 149 (2) of the MV Act by contenting that the 2nd respondent was holding a fake license but the insurance company have to satisfy the award at the 1st instance and recover the awarded amount from the owner as well as the driver respectively in view of sec.149 (4) of the MV Act. So these issues are answered accordingly.

10 **<u>Issue No.3</u>**

It is born out from case record that from the accident Pathu has sustained fatal injuries which lead to her death. As per Ext.A3 family membership certificate, the petitioners are the legal representatives of the deceased. Since the death of Pathu was of the direct or consequential effect of the accident, the claimants are entitled to get compensation for loss of life of her.

11 As per Ext.A2 postmortem report Pathu was aged 58 years at the time of her death. According to the claimant she was a coolie earning Rs.5000 per month. In support of this claim they did not produced any evidence.

12 It is the case of the claimants that Pathu was 58 years at the time of her death. It is relevant to see that the petitioners are the major son and daughters of the deceased. There is no positive evidence to show that the deceased was an earning member. In the instant case there is no evidence that either of the claimants were partially dependent on the deceased. So Neither of them cannot be considered as dependents on the deceased.

13 In the instant case the petitioners the legal representatives has filed the claim petition u/s 166 and 140 of the M.V. Act for compensation. When considering the factual aspects of the case, it can be said that neither of the claimants are not the dependents on the deceased. There is no avernment in the petition that neither of the claimants are dependents of the deceased.

14 The contention of the petitioner/claimants is that even if it is held that there is no loss of dependency, there is loss to estate to the claimants being the legal

representatives of the deceased. When on a close reading of the evidence on record, as I have stated the petitioner claimants are the legal representatives of the deceased Pathu as such they are entitled to inherit the estate of her. The dictum held in **Manjuri Bera V. Orintal Insurance Co. Ltd, and another 2007 ACJ 1279 and Joseph V. Giji Varghese and others 2010 ACJ 2313** are the authorities for the proposition of law that if the claimants are legal representatives of the deceased and they were not dependents on him in a claim u/s 166 they are not entitled to get compensation payable under the structured formula since a claim u/s 163-A and a claim u/s 166 are distinct and mutually distinguishable.

15 Since the petitioner claimants are not dependents of deceased Pathu no amount can be awarded taking note of the multiplier based on the structured formula in the second schedule u/s 163-A of M.V. Act. But on the other hand even if there is no loss of dependency to the petitioner/ claimants in fact they are the legal representatives of the deceased, they are only entitled to get the fixed amount/ crystallized amount u/s 140(2) of the MV Act which can be considered as part of the estate of the deceased which shall not be less than the liability flowing from Sec. 140(2) of the M.V. Act. Therefore the petitioners are entitled to get an amount of Rs. 50,000 as no fault liability u/s 140 of the M.V. Act.

16 The petitioners claimed an amount of Rs.5000 as the expenses incurred to take the deceased to the hospital and back. Considering this claim that amount is added towards that claim.

17 As the expenses for providing special diet to the deceased an amount of Rs. 1500

is added to that claim.

18 As funeral expenses an amount of Rs.25,000 is added to that count. (In view of the ratio held in 2013 (3) KLT 89 (SC))

19 As compensation for damages to the clothings and articles of the deceased an amount of Rs.1000 is added to that claim.

20 As bystanders expense an amount of Rs.1200 (Rs.200 per day for 2 persons for 3 days) is added that claim.

21 It is relevant to see that the deceased survived for 3 days after the accident as such the claimants are entitled to get compensation for pain and sufferings as such they are awarded with an amount of Rs.75000. (the compensation awarded is excess in view of the dictum held in **Pidikala Linga Reddy and others Vs. Satla Srinivas and others 2002 (1) ACC 545 at page 550 (AP).**

22 The petitioners had a claim for compensation as the expenses incurred for providing treatment to the deceased. In support of this claim they produced Ext.A5 series all worth Rs. 88,076/-. That amount is added towards claim for treatment expenses.

23 When considering the claim of the petitioners regarding compensation for loss of love and affection, it can be said that this claim is not admissible because due to the death of Pathu no amount of compensation could compensate the love and affection of her towards

the claimants, even then an amount of Rs.25,000 is added to that count.

24 Since the claim for compensation under the head of loss of consortium is not applicable to the facts of the case especially the claimants are the children of the deceased that claim is disallowed.

25 As compensation for loss of service rendered to the house an amount of Rs. 10000 is added to that claim.

26 As compensation for loss of estate a conventional amount of Rs. 10000 is added towards that count.

27 When considering the entire evidence let in by both sides it can be held that the petitioners are entitled to get a gross amount of Rs. 2,91,776 (Rupees two lac ninety one thousand seven hundred and seventy six only) as just compensation in this case. The compensation claimed and awarded can be summarized as follows:-

SL. No.	Head of Claim	Amount Claimed (Rs.)	Amount Awarded (Rs.)	Basis-vital details in a nutshell
1.	Transport to Hospital and back	5000	5000	
2.	Funeral expenses	10000	25000	
3.	Medical expenses	1,25,000	88076	
4.	Love and affection	25000	25000	
5.	Damage to clothing and articles	2000	1000	
6.	Pain and suffering	40000	75000	

7.	Pecuniary benefits of life	325000	50000	
8.	Bystanders expense	5000	1200	
9.	Extra nourishment	2000	1500	
10	Loss of consortium	35000	Not allowed	
11	Loss of service rendered to house	25000	10000	
12	Loss of estate	25000	10000	
	Total Claim Limited	6,24,000 4,00,000	2,91,776	

28 **Issue No.4**

It is admitted by the 3rd respondent that the offending vehicle was insured with them. In such a circumstance though the 1st and the 2nd respondents are liable the 3rd respondent have to deposit the compensation awarded to the claimants at the 1st instance and can get reimbursement of it from the 1st and the 2nd respondent as per the provisions of sec, 149 (4) of the MV Act.

In the result award is passed directing the 3rd respondent to pay the petitioner claimants a gross amount of Rs. 2,91,776 (Rupees two lac ninety one thousand seven hundred and seventy six only) as compensation less 140 MV Act interim award paid if any, together with interest at the rate of 7.5% per annum from the date of the petition till realization with cost at proportionate rate.

The petitioners will have equal right of share in the amount of compensation awarded. An amount of Rs. 3372.50 is due from the petitioners as the balance court fee, the same will be deducted from the compensation awarded to them.

The 3rd respondent is directed to bring a cheque for Rs.3372.50 in the name of MACT, Vatakara as the balance court fee payable by the petitioners. They also have bring 3 cheques for an amount of Rs.25000 each in the name of the petitioners which shall be paid to them. They also have to bring 3 cheques for the balance amount entitled by each petitioners together with interest which shall be placed in fixed deposit in a Nationalized Bank for a period of 2 years.

The cheques shall be produced within one month from the date of service of copy of the award to the parties. If the 3rd respondent fail to comply with the conditions stipulated in the award, the petitioners are at liberty to put into execution of the award.

(Dictated to the Confidential Assistant,transcribed by her, corrected and pronounced by me in open court this the 28th day of March, 2014.)

SD/-
Motor Accidents Claims Tribunal.

Petitioners Exhibits :

A1	02.02.10	: Copy of F.I.R in Cr. No. 65/10 Kuttiadi Police station
A2.	02.02.10	: Copy of postmortem report
A3.	10.03.10	: Family membership certificate issued from Village Office, Velom
A4.	02.02.10	: Copy of final report
A5.	-	: Series of medical bills
A6.	29.01.10	: Copy of accident register cum wound certificate

Respondent's Exhibits :

B1.	-	: Driving licence particulars
B2.	-	: Insurance policy

<u>Court Exhibits</u>	:	NIL
<u>Witness Exhibits</u>	:	NIL
<u>Petitioner's witness</u>	:	NIL
<u>Respondent's Witness</u>	:	NIL

Sd/-

Motor Accidents Claims Tribunal.

NB:The parties should apply as soon as possible for the return of all the documents which they may wish to preserve as the records will be liable to destroy after twelve years from this date.
Nkr.