
(2012) 03 KL CK 0250
In the High Court Of Kerala
Case No : MACA. No. 222 of 2008

Padickal Khadeeja

APPELLANT

Vs

National Insurance Co. Ltd., Thiruvananthapuram

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0250

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : Grashious Kuriakose and Smt. Celine Joseph, for the Appellant; Joe Kalliath, for the Respondent

Judgement

Pius C. Kuriakose, J.—Legal heir (mother) of a young man aged 22 years employed as a cleaner in a lorry, who lost his life in a road traffic accident, has preferred this appeal complaining that the total compensation determined by the learned Motor Accident Claims Tribunal is inadequate and also that the Tribunal erred in finding that the accident occurred due to negligence of the driver of the KSRTC bus which was involved in the accident and the scooter in which the deceased was travelling as a pillion rider. Under the impugned award, the learned Tribunal found that both the rider of the scooter and the driver of the bus contributed to the negligence leading to the accident in the ratio 50:50. As against a claim of Rs.10 lakhs, the Tribunal found that the total compensation receivable on account of the accident is Rs. 2,37,400/- and directed the Insurance company to release only 50% of the said amount in view of its finding that there was 50% contributory negligence on the side of the rider of the scooter in which the deceased was travelling. In this appeal, grounds are raised challenging the quantum of compensation and also finding regarding the contributory negligence from the part of the rider of the scooter. Having anxiously considered the submissions addressed before us by the learned counsel for the appellant and the learned standing counsel for the Insurance Company and having carefully gone through the impugned award, we are of the

view that the request of the learned counsel for the appellant for an opportunity to adduce evidence which will go to show that the accident in question occurred only due to the negligence on the driver of the bus or at any rate composite negligence on the driver of the bus as well as the rider of the scooter can be favourably considered. We also feel that the appellant can be afforded opportunity to adduce some more evidence for substantiating her contention that there is inadequacy in the compensation presently awarded by the Tribunal under various heads.

2. The result of the above discussion is that the impugned award is set aside. O.P.No.148/1999 is remanded back to the Motor Accidents Claims Tribunal, Kalpetta. It is open to the appellant to implead all necessary parties. The learned Tribunal will afford opportunity to all parties to adduce further evidence for substantiating their rival claims and contentions. Revised award will be passed on the basis of the entire evidence comes on record. While passing award, the learned Tribunal will address the issue as to the nature of the negligence which lead to the accident, whether it was composite negligence on the part of the driver of the bus and the rider of the scooter or whether it was contributory negligence. If the same is contributory negligence, what is the correct percentage of contribution? The learned Tribunal will also address the issue as to the correct compensation payable under various heads. The learned Tribunal will ensure that revised award is passed at the earliest at any rate within four months of receipt of a copy of this judgment.