

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 21<sup>ST</sup> DAY OF AUGUST 2024 / 30TH SRAVANA, 1946

MACA NO. 1932 OF 2012

AGAINST THE ORDER/JUDGMENT DATED IN OPMV NO.1694 OF 2007 OF

FIRST ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM

APPELLANT:

THE NEW INDIA ASSURANCE COMPANY LIMITED  
REP. BY DIVISIONAL MANAGER, DIVISIONAL OFFICE, KOLLAM,  
REPRESENTED BY ITS MANAGER, REGIONAL OFFICE  
KADAMKULATHY TOWERS, M.G.ROAD, ERNAKULAM.

BY ADVS.

SRI.LAL GEORGE

SEBASTIAN VARGHESE (K/141/2000)

RESPONDENT/S:

- 1      SUCHITHRA,  
         AGED 27 YEARS  
         W/O. LATE JAYAKRISHNAN, LAKSHMI VILAKATHU PUTHEN VEEDU,  
         PADINJARESSERI, MELILA P.O., KOTTARAKARA- 691 506.
- 2      ADITHYA (MINOR) D/O.SUCHITRA  
         AGED 16 YEARS  
         LAKSHMI VILAKATHU PUTHEN VEEDU, PADINJARESSERI, MELILA  
         P.O., KOTTARAKARA 691 506 REPRESENTED BY HER MOTHER  
         NAMELY MRS. SUCHITRA.
- 3      SALMA BEEVI, S/O.LATE SHANHIR  
         AGED 20 YEARS  
         AMBALATHUMVILA VEEDU, MANGAD, ARANOOTTIMANGALAM P.O  
         KOLLAM - 691 015.
- \*4      SHAHUL HAMEED S/O. ILAYAKUNJU (DIED)  
         AGED 58 YEARS  
         AMBALATHUMVILA VEEDU, MANGAD, ARANOOTTIMANGALAM PO  
         KOLLAM - 691 015.
- 5      SUBAIDA BEEVI, W/O SHAHUL HAMEED  
         AGED 53 YEARS  
         AMBALATHUMVILA VEEDU, MANGAD, ARANOOTTIMANGALAM PO  
         KOLLAM - 691 015.
- 6      PADMAJA DEVI, AGED 60 YEARS  
         W/O. GOPINATHAN PILLAI, PADMA RAGAM, PERUMPUZHA PO  
         KUNDARA - 691 504.
- 7      NATIONAL INSURANCE COMPANY LTD.

- KOLLAM BRANCH, HOSPITAL ROAD, KOLLAM-691 001.
- 8 SHANAVAS S., AGED 43 YEARS, S/O.LATE SHAHUL HAMEED,  
AMBALATHUMVILA VEEDU, MANGAD, ARANOOTTIMANGALAM  
P.O., KOLLAM -690 110
- 9 SHIBU, AGED 42 YEARS, S/O.LATE SHAHUL HAMEED,  
AMBALATHUMVILA VEEDU, MANGAD, ARANOOTTIMANGALAM  
P.O., KOLLAM 690110
- 10 SHINI NOUSHAD, AGED 47 YEARS, W/O. NOUSHAD B.,  
AMANATH, UNIVERSAL NAGAR 113, KILLIKOLLOOR P.O.,  
KILLIKOLLUR, KOLLAM, PIN-691001.

[RESPONDENTS 8 TO 10 IN I.A.NO.3/2024 ARE IMPEADED  
AS THE ADDITIONAL RESPONDENTS 8 TO 10 IN THE APPEAL  
BEING THE LEGAL HEIRS OF THE DECEASED 4TH RESPONDENT  
AS PER ORDER DATED 21.08.2024 IN I.A.NO.3/2024 IN  
MACA NO.1932/2012]]

BY ADVS.

FOR R1 AND R2 BY SRI.R.NIKHIL

FOR R6 BY SRI.R.MOHANA BABU

FOR R7 BY SRI.P.JACOB MATHEW

FOR R5 & R8 TO R10 BY SRI. R.REJI

THE COMMON JUDGMENT IN MACA NOS.1932/2012 AND 2789/2012  
HAVING BEEN RECALLED ON 12.08.2024 THE COURT ON 21.08.2024  
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 21<sup>ST</sup> DAY OF AUGUST 2024 / 30TH SRAVANA, 1946

MACA NO. 2789 OF 2012

AGAINST THE ORDER/JUDGMENT DATED 14.05.2012 IN OPMV NO.1694 OF  
2007 OF I ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM  
APPELLANT/S:

- 1        SUCHITRA  
          AGED 32 YEARS  
          W/O.THE LATE JAYAKRISHNAN, LAKSHMI VILAKATHU PUTHEN  
          VEEDU, PADINJARECHERRY, MELILA P.O., KOTTARAKARA.
- 2        ADITHYA MINOR  
          AGED 21 YEARS  
          D/O. LATE JAYAKRISHNAN, REPRESENTED BY HER MOTHER  
          SUCHITRA, LAKSHMI VILAKATHU PUTHEN VEEDU,  
          PADINJARECHERRY, MELILA P.O., KOTTARAKARA.  
          BY ADVS.  
          SRI.R.NIKHIL  
          SRI.P.ABDUL RAZAK

RESPONDENT/S:

- 1        SALMA BEEVI  
          W/O.LATE SHANHIR, AMBALATHUMVILA VEEDU,  
          ARANOOTTIMANGALAM P.O., KOLLAM DISTRICT-691015.
- \*2       SHAHUL HAMEED        (DIED)  
          AGED 58 YEARS  
          S/O.ILAYAKUNJU, AMBALATHUMVILA VEEDU,  
          ARANOOTTIMANGALAM P.O., KOLLAM DISTRICT 691015.
- 3        SUBAIDA BEEVI  
          W/O.SHAHUL HAMEED, AMBALATHUMVILA VEEDU,  
          ARANOOTTIMANGALAM P.O., KOLLAM DISTRICT-691015.
- 4        PADMAJA DEVI  
          W/O.GOPINATHAN PILLAI, PADMA RAGAM, PERUMPUZHA P.O.,  
          KUNDARA, KOLLAM DISTRICT-691504.
- 5        NEW INDIA ASSURANCE CO.LTD  
          REPRESENTED BY DIVISIONAL MANAGER, DIVISIONAL  
          OFFICE, KOLLAM 691001.
- 6        NATIONAL INSURANCE CO.LTD  
          KOLLAM BRANCH, HOSPITAL ROAD, KOLLAM-691001.

- 7 SHANAVAS S., AGED 43 YEARS, S/O.LATE SHAHUL HAMEED,  
AMBALATHUMVILA VEEDU, MANGAD, ARANOOTTIMANGALAM  
P.O.,KOLLAM-690110
- 8 SHIBU, AGED 42 YEARS, S/O.LATE SHAHUL HAMEED,  
AMBALATHUMVILA VEEDU, MANGAD, ARANOOTTIMANGALAM  
P.O., KOLLAM -690110
- 9 SHINI NOUSHAD, AGED 47 YEARS, W/O.NOUSHAD B,  
AMANATH,UNIVERSAL NAGAR 113, KILLIKOLLOOR P.O.,  
KILLIKOLLUR, KOLLAM, PIN-691001.

[RESPONDENTS 8 TO 10 IN I.A.NO.2/2024 ARE IMPEADED  
AS THE ADDITIONAL RESPONDENTS 7 TO 9 IN THE APPEAL  
BEING THE LEGAL HEIRS OF THE DECEASED 2ND  
RESPONDENT AS PER ORDER DATED 21.08.2024 IN  
I.A.NO.2/2024 IN MACA NO.2789/2012]]

BY ADVS.

FOR R4 BY SRI.R.MOHANA BABU

FOR R6 BY SRI.P.JACOB MATHEW

FOR R5 BY ADV.SEBASTIAN VARGHESE (K/141/2000)

THE COMMON JUDGMENT DATED 11.04.2024 IN MACA  
NOS.1932/2012 AND 2789/2012, HAVING BEEN RECALLED ON  
12.08.2024 THE COURT ON 21.08.2024 DELIVERED THE FOLLOWING:

**JUDGMENT****[MACA Nos.1932/2012, 2789/2012]**

Both these appeals are arising from an award passed by the 1<sup>st</sup> Additional Motor Accidents Claims Tribunal, Kollam in OP(MV) No.1694/2007. The said claim petition was filed by the appellants in M.A.C.A No.2789/2012, seeking compensation for the death of one Jayakrishnan in a motor accident that occurred on 15.11.2005. (For convenience, the parties herein are referred to as their respective ranks in the claim petition).

2. According to the petitioners, the accident occurred, when the Maruti car driven by the deceased Jayakrishnan collided with a motorcycle ridden by one Shanhir. Due to the injuries sustained, the said Jayakrishnan as well as the said Shanhir, the rider of the motorcycle, died. The Police registered a crime against the deceased Jayakrishnan and later filed an abated final report before the jurisdictional court. According to the appellants, the deceased was aged 31 and was working as an AC mechanic. The claim petition was submitted in such circumstances seeking a total compensation of Rs.4 Lakhs.

3. Respondents 1 to 3 are the legal heirs of the deceased rider of the motorcycle. The 4<sup>th</sup> respondent was the mother of the deceased

Jayakrishnan, 5<sup>th</sup> respondent was the insurer of the car and 6<sup>th</sup> respondent was the insurer of the motorcycle. The coverage of policy in respect of the Maruti car is admitted by the 5<sup>th</sup> respondent insurance company and the coverage of policy in respect of the motorcycle is admitted by the 6<sup>th</sup> respondent insurance company. However both of them disputed the liability on various grounds. The negligence of the respective drivers was also disputed by them and the quantum of compensation claimed was also challenged.

4. Another OP(MV) No.26/2007, which arose from the very same accident filed by the legal heirs of the deceased rider of the motorcycle, was tried along with this claim petition and disposed of by a common order.

5. The evidence in these cases consists of the oral testimonies of PW1 and Exts.A1 to A19 from the side of the claimants. No evidence was adduced by the respondents.

6. After the trial, the tribunal came to the conclusion that the rider of the motorcycle and the driver of the Maruti car have contributed to the accident equally and their respective contributions were fixed as 25% each. As the quantum of compensation, the tribunal fixed Rs.5,80,000/- and the 5<sup>th</sup> respondent herein, insurer of the car, was directed to deposit 75% of the said amount after deducting the contributory negligence on the part of the deceased along with interest at the rate of 7.5% per annum from the date of petition till realisation.

M.A.C.A.No.2789/2012 was filed by the claimants challenging the finding of contributory negligence whereas M.A.C.A.No.1932/2012 was filed by the 5<sup>th</sup> respondent/Insurance Company challenging the liability imposed upon them.

7. Heard Sri.R.Nikhil, the learned counsel for the claimants, Sri.Sebastian Varghese, the learned counsel appearing for the 5<sup>th</sup> respondent, Sri.R.Mohana Babu, the learned counsel appearing for the 4<sup>th</sup> respondent and Sri.P. Jacob Mathew, the learned counsel appearing for the 6<sup>th</sup> respondent.

8. The main question that arises for consideration in this appeal is with respect to the contributory negligence found upon the driver of the Maruti car and also the liability imposed upon the 5<sup>th</sup> respondent to satisfy the award. While considering the question of contributory negligence, one crucial aspect to be noticed is that, the award under challenge was a common award passed in OP(MV)No.1694/2007 which is under challenge in this appeal and OP(MV) No.26/2007 wherein the 5<sup>th</sup> respondent herein was directed to deposit 75% of the award passed in the said claim petition. To be precise, in OP(MV)No.26/2007, the Tribunal found that the claimants therein who are the respondents 1 to 3 herein, are entitled to a compensation of Rs.7,62,750/- and the 5<sup>th</sup> respondent/appellant in M.A.C.A.No.1932/2012 was directed to deposit Rs.5,72,062/- with interest, being the 75% of the amount determined by the Tribunal. While challenging the said finding of contributory

negligence by filing M.A.C.A.No.2789/2012, the appellants/claimants did not challenge the finding of contributory negligence upon the driver of the car, entered by the Tribunal in the award in OP(MV)No.26/2007 wherein, they were respondents 1, 2 and 4, by filing separate appeal. Since OP(MV) No.1694/2007 was filed seeking compensation for the death of the driver of the car, to whom contributory negligence was found in OP(MV)No.26/2007, lack of challenge against the award would be fatal. Similarly, the 5<sup>th</sup> respondent, the appellant in MACA No.1932/2012 also did not file any appeal against the finding in OP(MV) No.26/2007 directing them to pay the compensation determined therein. Thus, there is a technical defect in both these appeals, as the adverse finding entered in OP(MV) No.26/2007 which was disposed of by a common award along with OP(MV)No.1694/2007 was not challenged by any of the appellants. Therefore, both these appeals could be dismissed as not maintainable as those are hit by the principles of res judicata.

9. However, on scrutinizing the award passed by the Tribunal, three patent illegalities and errors are evident. The first defect is that, after evaluating the evidence, even though the Tribunal found that, both the drivers were responsible for the accident, their respective contributory negligence was fixed as 25% each alone, thereby making their total contribution to the accident as 50% only. Thus, a vacuum was created as far as the remaining 50% liability is concerned. Such a finding is a serious defect as there is no finding as to who contributed to the

accident to the extent of 50%.

10. Secondly, despite holding that both the drivers were responsible for the accident, the liability to pay the compensation was imposed upon the 5<sup>th</sup> respondent, the insurer of the car alone and the insurer of the motorcycle, the 6<sup>th</sup> respondent, along with the registered owner of the said motorcycle were exonerated from the liability, without any valid reason.

11. Thirdly, as far as OP(MV) No.1694/2007 is concerned, the Tribunal could not have issued any direction to the 5<sup>th</sup> respondent to pay the compensation in view of the fact that, the said claim was submitted by the legal representatives of the owner cum driver of the vehicle insured with the 5<sup>th</sup> respondent. It is to be noted that, when a contributory negligence is found on the part of the deceased, who was the owner cum driver of the vehicle insured with the 5<sup>th</sup> respondent, no liability could have been imposed upon the insurer, as far the compensation for the death of or the injuries sustained by their insured is concerned. The liability of the insurer is to indemnify the insured, for the damages caused due to the tortious acts committed by the insured, while using the insured vehicle and under no circumstances, can the such liability be extended to death of, or injuries sustained to such insured. Therefore, the proper course that ought to have been adopted by the Tribunal was to deduct the compensation to the extent of contributory negligence imposed upon the deceased driver of the Maruti car and to direct the insurer of the

motorcycle, i.e, the 6<sup>th</sup> respondent, to pay the remaining compensation, as the rider of the said motorcycle was also found to be responsible for the accident. To be precise, under no circumstances, the 5<sup>th</sup> respondent herein could have been imposed with the liability to pay any compensation to the death of the driver of the car, as he was the insured as far as the 5<sup>th</sup> respondent is concerned. Therefore, the deceased in this case was not a third party as far as the 5<sup>th</sup> respondent is concerned.

12. In view of the fact that, the award suffers from three inherent defects, I am of the view that, dismissing both these appeals on technical grounds of res judicata would cause serious prejudice to all the parties concerned. Therefore, I am of the view that, to rectify such inherent defects, the supervisory powers of this Court under Article 227 of the Constitution of India have to be invoked in the interest of justice. This is particularly because, when such patent illegalities are brought to the notice, this Court cannot close its eyes, on technical reasons. It is also to be noted that, as far the provisions in the Motor Vehicles Act, 1988, are concerned, those are part of welfare legislation, intended to protect the interests of the victims of the motor accident. While exercising the powers, this Court is under an obligation to ensure that the victims of the motor vehicles accident, get 'just compensation'. A technical approach in the peculiar facts of this case, would result in denial of the legitimate rights of the parties. Therefore, I am of the view that, despite the legal infirmity as referred to above, the appeal has to be entertained, only to

the extent of rectifying the serious defects in the award passed by the Tribunal. While considering the said question, I have taken note of the fact that, the 5<sup>th</sup> respondent- Insurer had already satisfied the award passed in OP(MV) No.26/2007 and therefore, the respondents 1 to 3 herein were already compensated for the loss suffered by them.

13. As far as the inter se negligence on the part of the driver of the motorcycle and driver of the car is concerned, the finding of the Tribunal is to the effect that, both the persons were equally responsible for the accident. On appreciation of the evidence also, the said view is probable. Besides the same, in view of the principles of res judicata as mentioned above, I do not intend to interfere with the finding of the Tribunal to the extent that both the drivers were equally responsible for the accident. However, after having found that both drivers were equally responsible for the accident, the Tribunal proceeded to enter into a finding limiting their respective contributions to the accident as 25% each alone, thereby creating a vacuum for the remaining liability of 50%. The consequence of such vacuum is that, no person was held responsible for the 50% of the liability, despite the fact that, this is a case in which only two vehicles were involved. The only logical conclusion flowing from a finding holding both the drivers equally responsible is that, a contributory negligence of 50% each has to be attributed to both of them. Such a course was not adopted which is a patent illegality that needs to be rectified. Therefore, I hold that, since the only conclusion possible when

it is found that both the drivers were responsible for the accident was to apportioning the liability between the said drivers equally, I hold that, contributory negligence of the deceased Jayakrishnan, the driver of the car was 50% and the liability of 50% is imposed on the rider of the motorcycle. Therefore, the entitlement of the petitioners in OP(MV)No.1694/2007 would be 50% of the award determined by the Tribunal, i.e. Rs.2,90,000/- (50% of Rs 5,80,000).

14. Another glaring mistake sought to be rectified is with respect to the liability imposed upon the 5<sup>th</sup> respondent herein, the appellant in MACA No.1932/2012. As mentioned above, the 5<sup>th</sup> respondent was the insurer of the car owned and driven by the deceased, for whose death, this claim petition for compensation was sought. Therefore, the relationship between the deceased and the 5<sup>th</sup> respondent was the insurer and the insured. Therefore, what can be recovered by filing this claim petition is the compensation for the death of the said person due to the negligent act of the rider of the motorcycle. Under no circumstances the 5<sup>th</sup> respondent herein can be held responsible for paying the compensation. The 6<sup>th</sup> respondent was the insurer of the said motorcycle and since I found that the rider of the motorcycle had contributed to the accident by 50%, the liability to pay 50% of the amount awarded by the Tribunal can only be imposed upon the 6<sup>th</sup> respondent herein.

In such circumstances, both these appeals are disposed of with the following findings:

i) As it is found that, both the drivers have contributed to the accident equally, their respective contributions to the accident are fixed as 50% each and consequently, the finding of the Tribunal imposing a contributory negligence at the rate of 25% each upon both of them is hereby set aside.

ii) The 5<sup>th</sup> respondent herein is exonerated from the liability to pay compensation to the petitioners in OP(MV)1694/2007

iii) The 6<sup>th</sup> respondent, the Insurer of the motorcycle, is held liable to pay 50% of the compensation determined by the Tribunal and consequently, it is ordered that, Rs.2,90,000/- (Rupees Two Lakhs Ninety thousand only) shall be deposited by them, with interest at the rate of 7.5% from the date of petition till realization with proportionate costs. The said amount shall be deposited by them within a period of three months from the date of receipt of copy of this judgment.

**Sd/-**

**ZIYAD RAHMAN A.A.  
JUDGE**

pkk