

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 23<sup>RD</sup> DAY OF AUGUST 2022 / 1ST BHADRA, 1944

MACA NO. 864 OF 2012

AGAINST THE AWARD DATED 21.02.2012 IN O.P. (MV) NO.332/2006

OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

APPELLANT/RESPONDENT NO.3 :

THE MANAGER,  
NEW INDIA ASSURANCE COMPANY LTD.,  
NATTIKA.P.O.,  
TRIPRAYAR.

BY ADV KKM.SHERIF

RESPONDENTS/PETITIONERS AND RESPONDENTS :

- 1 MR. ABDUL MAJEED,  
S/O. KUNJUMARAKKAR,  
MUNNAKKARAPRAMBIL HOUSE,  
EDATHIRNJI DESOM & VILLAGE,  
MUKUNDAPURAM TALUK,  
PIN-680122.
- 2 MRS. SAINABA,  
W/O. ABDUL MAJEED,  
MUNNAKKARAPRAMBIL HOUSE,  
EDATHIRNJI DESOM & VILLAGE,  
MUKUNDAPURAM TALUK,  
PIN-680122.
- 3 MR. P.V. PRAJOSH,  
S/O. VENUGOPAL,  
PAENGATTU HOUSE,  
P.O.KADAVANAD (VIA) PONNANI,  
MALAPPURAM DISTRICT,  
PIN-679586
- 4 MR. T.K. BABU,  
S/O. KOPPAN,  
THAYYIL HOUSE,  
PAREKKATTULARA,

MURIYAD.P.O. ,  
PIN-680683.

BY ADVS.

SRI.V.BINOY RAM (COUNSEL FOR CAVEATOR)

SRI.M.K.RANJIT

SMT.SAJITHA P.SOMAN, COUNSEL FOR CAVEATOR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 23.08.2022, ALONG WITH MACA.1131/2012, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 23<sup>RD</sup> DAY OF AUGUST 2022 / 1ST BHADRA, 1944

MACA NO. 1131 OF 2012

AGAINST THE AWARD DATED 21.02.2012 IN OP(MV)NO.332/2006

OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

APPELLANTS/PETITIONERS :

1 ABDUL MAJEED,  
S/O.KUNJUMARAKKAR,  
MUNNAKKAPARAMBIL HOUSE,  
EDATHIRINJI DESOM & VILLAGE,  
MUKUNDAPURAM TALUK.

2 SAINABA,  
W/O.ABDUL MAJEED,  
MUNNAKKAPARAMBIL HOUSE,  
EDATHIRINJI DESOM & VILLAGE,  
MUKUNDAPURAM TALUK.

BY ADV SRI.V.BINOY RAM

RESPONDENTS/RESPONDENTS :

1 P.V.PRAJOSH,  
S/O.VENUGOPAL,  
PANENGATTU HOUSE,  
P.O.KADAVANAD, (VIA) PONNANI,  
MALAPPURAM DISTRICT, PIN-679 586.

2 T.K.BABU,  
S/O.KOPPAN, THAYYIL HOUSE,  
PAREKKATTUKARA, P.O.MURIYAD,  
PIN-680 694.

3 THE MANAGER,  
NEW INDIA ASSURANCE CO.LTD.,  
NATTIKA.P.O., TRIPRAYAR,  
PIN-680 566.

BY ADV LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 23.08.2022, ALONG WITH MACA.864/2012, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**"C.R."**

**MACA Nos.864 and 1131 of 2012**

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**COMMON JUDGMENT**

MACA No.864 of 2012 is an appeal filed by the third respondent/New India Assurance Company Ltd. Challenging award dated 21.02.2012 in O.P.(MV)No.332 of 2006 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda.

2. MACA No.1131 of 2012 is an appeal at the option of the original petitioners before the Tribunal in the above case, arraying respondents as respondents herein, challenging the same award on the ground of inadequacy.

3. Heard Adv.Sri.Lal K.Joseph appearing for the appellant in MACA No.864 of 2012, Adv.Sri.Lal George

appearing for the third respondent and the learned counsel for the appellants in MACA No.1131 of 2012.

4. I shall refer the parties in this appeal as 'claimants' and 'insurer' hereinafter.

5. The petition averments in brief are as follows:

The petitioners' case is that on 24.10.2005 at about 2.30 p.m., while deceased Najmal @ Nejmal was working as lorry cleaner in a lorry bearing Registration No.KL-9/A 2651, driven by the second respondent, with loaded sand and while Najmal was sitting in the cabin and giving direction to the driver to move the lorry in reverse, head of Najmal got jammed in between a coconut tree and lorry and he was immediately taken to hospital and he succumbed to the injuries. The claimants lodged petition under Section 163A of the Motor Vehicles Act on the principle of 'no fault'.

6. R1 and R2 were set ex parte before the Tribunal.

7. R3 filed written statement admitting 'liability only policy' in relation to goods carriage lorry bearing Registration No.KL-9/A 2651. It was contended specifically that deceased (Najmal) was a gratuitous passenger in the lorry and therefore, the policy did not cover the risk. Similarly, quantum of compensation also was disputed.

8. The Tribunal adduced evidence in this matter. PW1 and PW2 examined and Exts.A1 to A10 on the part of the claimants. RW1 examined and Exts.B1 and B2 marked on the side of the insurer. Thereafter, the Tribunal granted Rs.3,25,500/- as compensation along with interest at the rate of 7.5% per annum.

9. I shall address the contention of the claimants in MACA No.1131 of 2012 on the ground of

inadequacy first. It is pointed out by the learned counsel for the claimants that, since the deceased was aged 18 years(below 20 years) as per the schedule appended to Section 163A of the Motor Vehicles Act, 2/3<sup>rd</sup> of Rs.6,84,000/- to be granted in this matter along with Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. But the Tribunal, instead of doing so, applied the multiplier method otherwise, available in cases of death in deviation from the structured 'formula'. Consequently, the compensation awarded was reduced in derogation to the structured 'formula'.

10. This contention is not seriously disputed, since it is the settled law. Following the table appended to Section 163A of the Motor Vehicles Act, when the annual income is Rs.36,000/-, 2/3<sup>rd</sup> of the amount of Rs.6,84,000/- coming to Rs.4,56,000/- along with Rs.2,000/- towards funeral expenses and Rs.2,500/-



towards loss of estate is liable to be granted. Thus, the total compensation entitled by the claimants is Rs.4,60,500/-.

11. In view of the matter, it is held that the claimants are entitled to get compensation to the tune of Rs.4,60,500/- at the rate of 7.5% interest from the date of petition till the date of deposit or realisation.

12. Coming to the dispute raised in MACA No.864 of 2012, it is vehemently argued by the learned counsel for the insurer that no evidence adduced to prove that Najmal was the cleaner of the lorry at the time of accident, in a case where, the owner of the vehicle, who is the first respondent also, was ex parte before the Tribunal.

13. According to the learned counsel for the insurer, the status of Najmal is nothing but that of a gratuitous passenger and therefore, the company has no liability to indemnify the insured, since no premium

collected to cover the risk of a gratuitous passenger.

14. Per contra, it is submitted by the learned counsel for the claimants that, right from the very beginning, the claimants raised specific plea in the petition that Najmal died, while he was working as a cleaner in the lorry bearing Registration No.KL-9/A 2651 and he became victim of the accident, while doing the said job.

15. It is pointed out further that PW1, the first claimant and father of Najmal given categorical evidence before the Tribunal that Najmal was doing the job of cleaner at the time of accident and his evidence was not shaken during cross-examination. Therefore, the Tribunal could not be faulted in the matter of fastening liability upon the company.

16. It is submitted further that, if it is conceded that Najmal was not the cleaner of the lorry at the time of accident, then also as per Ext.B1 policy, Rs.75/- was

collected towards premium under the head NFPP (Non-Fare Paying Passengers) and therefore, the company is liable otherwise.

17. In this matter, on perusal of the petition averments, it is crystal clear that the claimants put up a specific case right from the very beginning, asserting that, Najmal was working as a cleaner in the lorry at the time of accident and PW1, the father given evidence in support of this contention. It is true that PW2, the occurrence witness also deposed in tune with the version of PW1. But during cross-examination, he would say that his knowledge as regards to the status of Najmal as cleaner is hearsay and it was stated by Babu, the driver of the lorry.

18. It is relevant to note that the insurer examined the Investigating Officer in this crime as RW1. During cross-examination, RW1 admitted that in column No.6 of the inquest, it was stated that the deceased was

doing the job of lorry cleaner. Though he deviated from the statement on the next moment, on perusal of the inquest report, it could be gathered that in column No.6, it was specifically stated that the deceased was a bachelor and he was doing the job of lorry cleaner at the time of accident.

19. It is apposite in this context to have a glimpse regarding the rule of evidence to be applied in this case. It is the trite law that 'preponderance of probabilities and possibilities' is the rule of evidence to be applied while querying proof of allegations involved in civil cases. When coming to benevolent legislations, the rule of evidence is nothing but 'preponderance of probabilities and possibilities' and in such cases, the evidence shall be evaluated in a liberal manner without insisting for the extreme form of 'preponderance of probabilities and possibilities'. When a person died while working as a

cleaner in a lorry, it is not possible always to produce documentary evidence to prove his job as a cleaner. Therefore, the available evidence should be liberally evaluated to find the question as to whether the so called person was working as a cleaner in the lorry at the time of accident. Viewing so, the evidence discussed herein above can be relied on to hold that 'Najmal' was working as cleaner in the lorry at the time of accident.

20. Thus, it appears that in a case based on a benevolent legislation, the evidence available as discussed herein above cannot be eschewed to hold that the deceased was not the cleaner in the lorry at the time of accident on the ground that no documentary evidence in this regard had been let in.

21. Therefore, I am of the view that the contention raised by the insurer, denying liability on the ground that Ext.B1 policy is a 'liability only policy' could not

sustain. On perusal of Ext.B1, it is crystal clear that the risk of two employees were covered and premium for the said cover also was collected.

22. In view of this finding, I am not inclined to address on the question as to whether collection of premium under the head NFPP would also entitle payment of compensation by the company to the claimants, even assuming that his status is that of a gratuitous passenger.

23. To summarise, it is held that MACA No.864 of 2012 is devoid of any merit and it is liable to be dismissed. MACA No.1131 of 2012 is liable to be allowed.

In the result, MACA No.864 of 2012 stands dismissed. MACA No.1131 of 2012 stands allowed. It is ordered that claimants are entitled to get Rs.4,60,500/- (Rupees Four lakh Sixty Thousand Five Hundred only) as total compensation at the rate of 7.5% from the date of petition till the date of deposit or realisation. The insurance

company is directed to deposit the same in the name of the claimants in equal proportion, within two months from today and on deposit, the claimants are at liberty to release the same.

Payment of court fee, if any, ordered by the Tribunal also to be complied with and the remaining amount to be deposited in the names of the appellants.

Sd/-

**A.BADHARUDEEN, JUDGE**

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