

Kerala High Court

Mariakutty vs Rahim M.K on 1 November, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

MACA.No. 2023 of 2005()

1. MARIAKUTTY, W/O. SAIDALAVI, AGED 53 YEARS  
... Petitioner
2. FATHIMA, W/O LATE HAMEED @ SHAHUL HAMEED
3. HASNA FERHAMATH, AGED 5, MINOR.
4. MUHAMMED @ MANU, AGED 30 YEARS.
5. AYSHA, 33 YEARS, W/O ISMAIL.
6. SUBAISA, 26 YEARS, W/O.HAMEED.

Vs

1. RAHIM M.K, S/O MUHAMED KUNJU,  
... Respondent
2. RATHEESH KUMAR.A., SREE VISAK, IC 19/326
3. THE NATIONAL INSURANCE COMPANY LTD.,

For Respondent :SRI.N.S.MOHAMMED USMAN

The Hon'ble MR. Justice A.K.BASHEER  
The Hon'ble MR. Justice P.Q.BARKATH ALI

Dated :01/11/2010

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A.K. Basheer & P.Q. Barkath Ali, JJ.

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MACA.No. 2023 of 2005 - B

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Dated this the 1st day of November, 2010 Judgment Basheer, J:

Legal heirs of deceased victim of a road traffic accident have filed this appeal impugning the award passed by the Motor Accidents Claims Tribunal.

2. The deceased was riding a two wheeler on the ill-fated day. It appears that his two wheeler collided against a lorry coming from the opposite direction. The Claim Petition was initially laid under Section 166 of the Motor Vehicles Act. But later the claim was converted as one under Section 163A. However no other amendments particularly with regard to the monthly income of the deceased was carried out in the Claim Petition.

3. It is the case of the appellants that the deceased was working in a Middle East country and earning Rs.22,000/- per month. But when the Claim Petition was converted as one under Section 163A, no suitable amendment was sought for. The Tribunal dismissed the Claim Petition as not maintainable since the monthly income of the deceased exceeded Rs.4,000/-.

4. There is yet another aspect of the matter. As has MACA.2023/05 : 2 :

been mentioned earlier, the accident occurred due to a head on collision. It is on record that the Police charge sheeted the driver of the lorry as well as the rider of the two wheeler. Pw.2 was examined on the side of the claimants and he spoke about the accident. However the lorry driver never bothered to step into the box and deny the charge of rash and negligent driving made against him. But still the Tribunal proceeded to hold that deceased rider was entirely responsible for the accident, ignoring the fact that the Police had charge sheeted both the drivers. We are afraid the approach made by the Tribunal is totally unwarranted, especially in the absence of any contra evidence adduced by the lorry driver. The Tribunal has of course referred to the scene mahazar prepared by the Police. But that could not have been the be-all and end-all in such matters.

5. A Division Bench of this Court in Phillippose Cherian and anr. v. T.A.Edward Lobo & anr. (1991 ACJ

634) has observed thus:

"..In a scene mahazar it is usual to contain two types of facts. Those facts which were observed by the MACA.2023/05 : 3 :

author with his own eyes and those which he heard from others. The latter category is hearsay and is hence inadmissible except for certain limited uses. An entry in scene mahazar which relates to what the author has seen with his own eyes is admissible as direct evidence."

We have referred to the conclusion made by the Tribunal in order to highlight the fact that such an exercise has been carried out by the Tribunal in the absence of any contra evidence adduced by the driver and that too relying solely on the scene mahazar. In our view, the Tribunal ought to have been a little more circumspect and careful especially on the face of the composite charge laid by the Police against the

two drivers. Anyway, we do not propose to deal with the above issue any further, in view of the order that we propose to pass.

6. Having heard learned counsel for the parties and having perused the materials available on record, we are of the view that the appellants have to be given a further MACA.2023/05 : 4 :

opportunity to prosecute their case appropriately. It will be open to the appellants to amend the pleadings, if so advised, in which event the respondents shall also be entitled to adduce further evidence, both oral and documentary.

7. Therefore the impugned award is set aside. The case is remitted to the Tribunal for fresh disposal in accordance with law.

Parties shall appear before the Tribunal on November 30, 2010.

A.K. Basheer Judge.

P.Q. Barkath Ali Judge.

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