

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 25<sup>TH</sup> DAY OF JANUARY 2023 / 5TH MAGHA, 1944

MACA NO. 352 OF 2022

APPELLANT:

KERALA STATE INSURANCE DEPARTMENT,  
REPRESENTED BY DISTRICT INSURANCE OFFICER  
CIVIL STATION, KOZHIKODE, PIN - 673620.  
BY ADV GOVERNMENT PLEADER

RESPONDENTS:

- 1 JOY WILSON M.V,  
S/O VINCENT, GLENDALE, CHERUVANNUR,  
KOZHIKODE, PIN - 673631.
- 2 GLEN ELVIS M.J  
S/O JOY WILSON, GLENDALE, CHERUVANNUR,  
FEROK P.O., KOZHIKKODE, PIN - 673631
- 3 RENIL ASHLIN M.J  
S/O JOY WILSON, GLENDALE, CHERUVANNUR,  
FEROK P.O., KOZHIKKODE, PIN - 673631
- 4 LILLY MENDONZA  
W/O LATE WILLIAM MENDONZA, CAMEL VILLA,  
GARDEN'S ROAD, THALASSERY, PIN - 670102
- 5 DIRECTOR GENERAL OF POLICE  
TRIVANDRUM, KERALA, PIN - 695010
- 6 SAJESH KUMAR P.  
S/O GOPALAN NAIR, PUTHUKKAD(HOUSE),  
KAKKUR .P.O., KOZHIKKODE, PIN - 673613  
(DRIVER OF THE JEEP. KL01/AQ/7154)  
BY ADVS.  
SRINATH GIRISH P.  
M.K.SUMOD MUNDACHALIL KOTTIETH  
NIRMAL S.  
P.JERIL BABU(K/806/2009)  
K.R.AVINASH (KUNNATH)(K/1364/2003)  
ABDUL RA00F PALLIPATH(K/920/1998)  
VIDYA M.K.(K/910/1990)

SRI.S.GOPINADHAN -SR.GP

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 25.01.2023, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

**CR****JUDGMENT**

Its an unkind cut when the victim of a road accident is accused of negligence crossing a road through the designated “Zebra Crossing”; further confounded by the fact that the offending vehicle was the police car, driven by a Police Driver.

2. This case exposes the underlying maladies on our roads - the complete lack of knowledge of road safety by drivers; with generously added recklessness and cavalier regard for law.

3. Pedestrians, especially children and the aged, are probably the most vulnerable road users. The chaotic confusion in our roads makes matters far more dangerous; and when pedestrians are run down even on “Zebra Crossings”, it shows how precious little our drivers know of the Rules of User of roads.

4. The appellant is the Kerala State Insurance Department, which impugn the order of the Motor Accidents Claims Tribunal, Thalassery, ('Tribunal', for short), in OP(MV)No.1236/2015.

5. The afore Original Petition was impelled by the husband, children and mother of late Doreena Rola Mendenza (who will hereinafter to be referred to as the 'deceased').

6. Going by the admitted facts, While the deceased was crossing the National Highway, Cherukunnu, taking advantage of a Pedestrian "Zebra Crossing", the offending vehicle, owned by the Police and registered in the name of Director General of Police, Thiruvananthapuram, hit her, leading to the causation of severe injuries, inevitably leading to her unfortunate death.

7. The Tribunal marked Exts.A1 to A6 on the side of the claimants; and no evidence was led by the respondents - either documentary or through witnesses. The Tribunal, thereupon, awarded an amount of Rs.48,32,140/-, along with interest, against the total claim of Rs.86,95,000/-; and this has been assailed by the appellant herein.

8. Sri.S.Gopinadhan - learned Senior Government Pleader, submitted that the evidence on record would limpidly show that the deceased was careless and negligent while crossing the road; and that she ought to have been more circumspect and aware of the surroundings and circumstances, particularly of the heavy traffic in the area.

9. Sri.S.Gopinadhan argued that, when the deceased herself was negligent, the Tribunal ought not to have awarded a

sum as large as Rs.48,32,140/-, but should have found contributory negligence on her side and to have reduced it substantially. He explained that, it is in such circumstances that the appellant has been constrained to approach this Court; and thus prayed that the impugned Award of the Tribunal be set aside, at least to the extent to which it has refused to take into account the contributory negligence on the part of the deceased.

10. In response, the respective learned counsel appearing for respondents 1,2 and 3, submitted that, at the time of the accident, the deceased was only 50 years in age and was working as the Headmistress of "St.Joseph L.P.School", drawing a monthly salary of Rs.51,704/-. They pointed out that the Tribunal, therefore, assessed the claim in a very reasonable manner and awarded an amount of Rs.48,32,133/-, against their clients' claim of Rs.85,95,000/-, which is extremely reasonable and in fact, less than adequate, going by the circumstances involved. They submitted that, however, their clients have chosen to accept the Award; and consequently prayed that this Appeal be dismissed.

11. The files reveal that the 4<sup>th</sup> respondent is now no more, but her legal heirs are already on record as respondents 1,2 and 3. That apart, going by the conclusions I propose in this Appeal, I do not

think that death of the 4<sup>th</sup> respondent would impede this Court in any manner.

12. As the afore narrative of facts shows, the only ground impelled by the appellant, through the learned Senior Government Pleader - Sri.S.Gopinadhan, is that deceased - Smt.Doreena Rola Mendenza, was careless in crossing the road, especially because it was a National Highway. However, it must be borne in mind immediately that no evidence has been lead by the appellant in this regard - either documentary or through witnesses; and obviously, therefore, the afore assertion can only be, at the best, an afterthought and nothing more.

13. That apart, it is baffling for this Court that an argument is made out by the appellant that, when a pedestrian crosses the road at the earmarked place for such purpose - which is commonly known as 'zebra crossing' - the rash conduct of a vehicle, in hitting him/her, should be justified on the ground that liability of care is more on the said person. It is internationally accepted, which does not require any restatement by this Court, that Pedestrian Crossings/Zebra Crossing are meant to offer priority to pedestrians and that it becomes their right to use the same, as and when they require it, especially when there are no traffic lights controlling

movement through it.

14. There is no case for the learned Senior Government Pleader that the deceased crossed the road in any area other than which was marked for such purpose, nor does he have a contention that the entries in the First Information Report and the Charge Sheet of the Police are, in any manner, in error.

15. Pertinently, relying on Ext.A1 First Information Report, the Tribunal has recorded that the conclusion of the Investigating Authority was that the vehicle was driven in a rash and negligent manner.

16. When one juxtaposes the afore with the conceded fact that the offending vehicle was a Police Jeep, driven by a Police Driver, the enormity of the situation projects itself.

17. The Rules of the Road Regulations, 1989, render it statutorily obliged for the driver of a Motor Vehicle to slow down at a road intersection, a road junction, pedestrian crossing or a road corner.

18. It is admitted, without any dispute, that the deceased was crossing the road along the 'Zebra Crossing', and that the offending vehicle neither stopped or even slowed down, thus hitting her. This

is an uncondonable conduct from a Police Driver, whose liability to follow the law is much more imperative than any other.

19. Thus, when pedestrians, apodictically, have priority on the 'Zebra Crossing' and merely because the drivers of vehicles do not understand this, it would be egregiously outlandish to even suggest that one who is killed or sustains injury solely because he/she took the liberty of making the crossing through such designated area, should nevertheless be held guilty of contributory negligence. This is contrary to the established road norms and the internationally accepted canons of road safety; and this becomes much more pronounced when one hears that the accident was caused by a Police Jeep, driven by a Police Driver. The standard of care in such cases must be much more on the owner and driver of the vehicle; and therefore, one cannot find any fault with the Tribunal in having concluded that no amount of negligence - even whisperingly - can be attributed to the deceased.

20. To paraphrase, unless it is specifically pleaded and proved that the action of the pedestrian was such as to lead specifically to a clear finding of negligence, no such can be inferred, when he/she is injured or killed on a Pedestrian Crossing/Zebra Crossing.

21. As far as the family of the victim is concerned, they face the prospect of having lost their loved one, solely because she chose to act as per law and to make the crossing in the designated area. Any interference with the Award of the Tribunal, therefore, would be an anathema to the principles of justice and fair play; and am fully of the view that it would be impermissible for this Court, in any manner, to accede to any of the grounds pleaded in this appeal.

In the afore circumstances, I dismiss this appeal with costs, confirming the findings and conclusions of the Tribunal; with liberty being reserved to the respondents to approach the Tribunal for payment of any amount that has already been deposited by the appellant and to execute the Award in every manner, as is available to them in law.

After I dictated this part of the judgment, Sri.S.Gopinadhan - learned Senior Government Pleader, intervened to say that the Tribunal has erred in deciding the 'Loss of Dependency', based on Ext.A4 and that the sons of the deceased are now major and not depending upon her.

I am afraid that I cannot accede to this argument at all because no such contention was even whisperingly impelled before the Tribunal, as has been recorded by it in paragraph 11 of the



impugned Award. In fact, the Tribunal has recorded specifically that *“there is no dispute with respect to the dependency. The respondents not raised any objection regarding the dependency”* (sic). That apart, the question of dependency is a matter of fact and if it has to be rebutted, then the respondents ought to have pleaded so and proved it. No such having been done, these arguments, therefore, at the best, is an attempt at brinkmanship; and therefore, are repelled.

This case is an eye opener for all of us. Our roads are still woefully inadequate in pedestrian safety. There are seldom pedestrian crossings properly marked; and even when they are, very few drivers heed it. This Court is fully aware if the Rules relating to ‘Zebra Crossing’ are taught to the learner drivers; but it is evident that they are never enforced.

This must now change - and quickly, with the traffic increasing and the jostle for space in our roads escalating rapidly.

Pedestrian Crossings must be marked and enforced on all main roads - this is the forensic duty of the Authorities and officers concerned.

Copy of this judgment will, therefore, be served by the

Registry on the Chief Secretary, Government of Kerala; State Police Chief, Kerala; Secretary, Public Works Department, Government of Kerala; and the National Highway Authority of India, G 5&6, Dabri - Gurgaon Road, Sector 10 Dwarka, Dwarka, Delhi - 110075, for necessary action.

Though the Appeal stands dismissed, the Registry will list this matter for reports by the afore mentioned Authorities on 10.03.2023.

**Sd/ -**

**DEVAN RAMACHANDRAN  
JUDGE**

**akv/MC**