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C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 17TH DAY OF JANUARY 2025 / 27TH POUSHA, 1946

MACA NO. 3057 OF 2015

OPMV NO.269 OF 2013 OF ADDITIONAL MACT-II, THODUPUZHA

APPELLANT/3RD RESPONDENT

THE NEW INDIA ASSURANCE CO. LTD
REGIONAL OFFICE, KANDAMKULATHY TOWERS, M.G.ROAD,
ERNAKULAM, REPRESENTED BY ITS DULY AUTHORISED
OFFICER.

BY ADV SRI.VPK.PANICKER- SC

RESPONDENT/PETITIONER

FR.MATHEW PAIKADA
PROVINCIAL, ST.JOSEPH CAPUCHIAN, PROVINCIALATE SH
MOUNT P.O., KOTTAYAM - 686 006.

BY ADV SRI.S.SACHITHANANDA PAI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 11.12.2024, THE COURT ON 17.01.2025
DELIVERED THE FOLLOWING:

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C.R.

JUDGMENT

Dated : 17th January, 2025

The 3rd respondent in OP(MV).No.269/2013 on the file of Additional MACT-II Thodupuzha is the appellant and the Original petitioner in the OP is the respondent. The above petition was filed under Section 166 of the Motor Vehicles Act claiming compensation in respect of the death of Fr.Tom Kalathil, in a road traffic accident.

2. As per the averments in the petition, on 16.4.2013, Fr. Tom Kalathil was travelling in a motor bike bearing registration No.KL-6C-7444 from Pulliyanmala to Kattappana and when he reached near hill top, a lorry bearing registration No.KL-37-8293 driven by the 1st respondent in a rash and negligent manner, hit on the motor bike and as a result of which he sustained serious injuries. He succumbed to the injuries at the hospital on the same day. The 2nd respondent is the owner of the lorry and the 3rd respondent is its insurer. In the OP he claimed a compensation of Rs.12 Lakhs.

3. Respondents 1 and 2 remained ex parte. The 3rd respondent filed a written statement disputing the maintainability of the petition and alleging that the accident occurred due to the negligence of the deceased. It was further contended that the petitioner has no locus standi to file the petition. However, it is admitted that the lorry had valid insurance coverage.

4. The evidence in the case consists of Exts.A1 to A15. No evidence was adduced by the respondents. After evaluating the evidence, the Tribunal passed the



impugned award, allowing a compensation of Rs.13,19,000/-. Being aggrieved by the above Award, the 3rd respondent preferred this appeal.

5. Now the points that arise for consideration is the following :

(i) Whether the petitioner has locus standi to file the petition ?

(ii) Whether the Diocese is entitled to claim compensation for the death of the deceased priest ?

6. Heard Sri.V.P.K.Panicker, the learned Standing Counsel for the appellant and Sri.Sachithananda Pai, the learned counsel for the respondent.

7. The points : In this case the OP was filed by Fr.Mathew Paikada, Provincial, St.Joseph Capuchian, Provincialate, SH Mount P.O., Kottayam. In the petition it is claimed that he has filed the OP for and on behalf of the Provincialate as the deceased was a member of the Provincialate. The learned counsel for the appellant would argue that the Provincialate cannot be considered as legal representative of the deceased and therefore, he would argue that the OP filed on behalf of the Provincialate claiming compensation on the death of the deceased priest is not maintainable. In support of the above argument, he has relied upon the decision of a learned Single Judge of this Court in **Catholic Diocese, Muvattupuzha and Others v. Muthaiah P and Another**, 2019 (4) KHC 865.

8. On the other hand, the learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in **Jayasree N. and Others v. Cholamandalam MS General Insurance Company Ltd.**, AIR 2021 SC 5218, in



support of his argument that the Provincialate is the true legal representative of the deceased priest.

9. It is true that in the decision in **Jayasree** (supra) in paragraph 20 the Hon'ble Supreme Court observed that in an earlier decision in *Montford Brothers of St.Gabriel and Another v. United India Insurance and Another*, the Court held that the appellant Society was the legal representative of the deceased 'brother' in the following words:

“In Montford Brothers of St.Gabriel and Another v. United India Insurance and Another; (2014 KHC 4054 : (2014) 2 SCC 394 : 2014 (1) KHC SN 26 : 2014 (1) SCALE 645 : 2014 (2) KLJ 228 : AIR 2014 SC 1550 : 2014 ACJ 667) this Court was considering the claim petition of a charitable society for award of compensation on account of the death of its member. The appellant – society therein was a registered charitable society and was running various institutions as a constituent unit of Catholic church. Its members, after joining the appellant – society, renounced the world and were known as 'brother'. In this case, a 'brother' died in a motor vehicle accident. The claim petition filed by the appellant – society seeking compensation on account of the death of aforesaid 'brother' was rejected by the High Court on the ground of its maintainability. This Court after examining various provisions of the MV Act held that the appellant – society was the legal representative of the deceased 'brother'. “

10. However, the learned counsel for the appellant invited my attention to the decision of the Hon'ble Supreme court in **Montford Brothers** (supra) and submitted that in the above decision there was no such finding. On a perusal of the above judgment, it can be seen that in paragraph 5, the Hon'ble Supreme Court specifically stated that though the question of maintainability of the petition was



raised in the written statement and issue No.(i) was formulated in that respect, the said issue was not addressed and hence there was no adjudication in that respect.

Paragraph 5 of the above judgment is extracted below for reference:

“5. One ‘Brother’ of the Society, namely, Alex Chandy Thomas was a Director-cum-Head master of St. Peter High School and he died in a motor accident on 22.06.1992. The accident was between a Jeep driven by the deceased and a Maruti Gypsy covered by insurance policy issued by the respondent Insurance Company. At the time of death the deceased was aged 34 years and was drawing monthly salary of Rs.4,190/-. The claim petition bearing No.55 of 1992 was filed before M.A.C.T., Aizawal by appellant no.2 on being duly authorized by the appellant no.1-the society. The owner of the Gypsy vehicle discussed in his written statement that vehicle was duly insured and hence liability, if any, was upon the Insurance Company. The respondent-Insurance Company also filed a written statement and thereby raised various objections to the claim. But as is clear from the written statement under Annexure P.2 it never raised the issue that since the deceased was a ‘Brother’ and therefore without any family or heir, the appellant could not file claim petition for want of locus standi. The issue no.1 regarding maintainability of claim petition was not pressed by the respondents. The Tribunal awarded a compensation of Rs.2,52,000/- in favour of the claimant and against the opposite parties with a direction to the insurer to deposit Rs.2,27,000/- with the Tribunal as Rs.25,000/- had already been deposited as interim compensation. The Tribunal also permitted interest at the rate of 12% per annum, but from the date of judgment dated 14.07.1994 passed in MACT case Nos. 55 and 82 of 1992.

11. From the above extract of the judgment of **Montford Brothers** (supra) it is clear that the question whether the Diocess has locus standi to file the claim petition on behalf of the deceased “brother” was not at all decided by the Hon'ble Supreme Court in that case. Therefore, the observation made by the Hon'ble Supreme court to the contrary in the decision in **Jayasree** (supra) is only an obiter.



12. In the decision in **Oriental Insurance Company v. Mother Superior and Ors., 1994 (1) KLT 868**, a Division Bench of this Court held that a Mother Superior can be a legal representative of a nun and any person entering holy order as a nun will enter civil death. Upon entrance of the deceased in holy order, she became its member and a member of family consisting of Mother Superior and other members of the holly order.

13. In the decision in **Varghese v. Krishnan Nair, 2004 (2) KLT 783** another Division Bench of this Court, relying upon the decision in **Mother Superior** (supra) also held that the monastery can claim compensation of the deceased priest and the claim of the monastery overrides the claim of his natural family.

14. On the other hand in **Msgr Xavier Chullickal v. C.G.Raphael, 2017 3 KHC 193**, another Division bench of this Court held that a Christian Priest is governed by Indian Succession Act 1925 and that he can receive and alienate property in his name. It was also held that the Indian Succession Act has overriding effect over canon laws/personal laws. It was further held by the Division Bench in paragraph 12 that the decisions in **Mother Superior** (supra) and **Varghese** (supra) are no longer good law, in the following words :

“However property obtained by a Hindu ascetic or a Christian priest on behalf of a Mutt or a Monastery stand on a different footing and the same would devolve on the successor administrator. Sital Das v. Sant Ram and others, 1954 KHC 531 : AIR 1954 SC 606 1954 KHC 531 : AIR 1954 SC 606 and Shri Krishna Singh v. Mathura Ahir and others, 1981 KHC 669 : 1981 (3) SCC 689 : AIR 1980 SC 707 are cases dealing with the right over Mutt property only. Sital Das was rendered



before the coming into force of the Hindu Succession Act, 1956 and Shri Krishna Singh essentially dealt with the Mahantship and Mutt property which are of little application here. Unfortunately Sital Das has been relied on heavily in Mother Superior v. D.E.O., Kottayam and others, 1977 KHC 136 : 1977 KLT 303 : ILR 1977 (1) Ker. 616 : 1977 (2) LLJ 450 to hold that Canon Law is the rule of thumb. Oriental Insurance Company v. Mother Superior, 1994 KHC 183 : 1994 (1) KLT 868 : 1994 (1) KLJ 825 : ILR 1994 (3) Ker. 677 and Varghese v. Krishnan Nair, 2004 KHC 663 : 2004 (2) KLT 783 : 2004 (2) KLJ 323 : ILR 2004 (3) Ker. 15 follows Mother Superior (supra) and nothing more. We have no hesitation to hold that the above decisions of the Division Bench on the right of a Christian priest or nun over his / her personal property are no longer good law and binding. This is so in view of the unequivocal pronouncement in Mary Roy v. State of Kerala, 1986 KHC 129 : AIR 1986 SC 1011 : 1986 KLT 508 : 1986 KLJ 253 : 1986 (2) SCC 209 and Molly Joseph v. George Sebastian, 1997 KHC 1 : 1997 (1) KLT 1 : 1996 (6) SCC 337 : AIR 1997 SC 109 : 1996 AIR SCW 4267 : JT 1996 (9) SC 120 : 1996 (3) SCJ 532 on the point.

15. In **Catholic Diocese, Muvattupuzha and Others v. Muthaiah P and Another, 2019 (4) KHC 865**, the learned Single Judge of this Court after analyzing all the above case laws, held in paragraph 9 that :

9. *“In the light of the discussions contained in the foregoing paragraphs, there cannot be any doubt to the fact that the siblings of the deceased priest alone can be regarded as his legal representatives for raising the claim for compensation.....”*

16. In the light of the above discussions, it is to be held that the Diocese is not entitled to claim compensation for the death of a deceased priest. Therefore, the present OP filed by the petitioner on behalf of the Provincialate is not maintainable and it is liable to be dismissed. In other words, the impugned award passed by the Additional Motor Accident Claims Tribunal-II, Thodupuzha, awarding compensation

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to the petitioner is liable to be set aside by allowing this appeal. Points 1 and 2 answered accordingly.

In the result, the appeal is allowed. The impugned award of the Additional Motor Accident Claims Tribunal-II, Thodupuzha in OP(MV) 263/2013 is set aside. The OP is dismissed. Considering the facts, I order no costs.

Sd/-

C.Pratheep Kumar, Judge

Mrcs/14.1.25