

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

MACA.No. 428 of 2003 ()

AGAINST THE AWARD IN OPMV 635/1995 of M.A.C.T., KOTTAYAM
DATED 23-12-2002

APPELLANT: PETITIONER

SAJIMON, AGED 23 YEARS,
MADAMPACKAL HOUSE,
KANNADI KARA, KUNNAMMA VILLAGE,
ALAPPUZHA.

BY ADV. SMT.M.K.PUSHPALATHA

RESPONDENT(S) : RESPONDENTS

1. KURIAN BABU,
S/O.M.A.KURIAN,
MATTATHIL, KUZHIMATOM.
2. ORIENTAL INSURANCE CO.LTD.,
KOTTAYAM BRANCH.
- *3. PREMACHANDRAN,
S/O.RAJAPPAN, KARRIYIL HOUSE,
SACHGIVOHAMAPURAM, KURICHY. (DELETED)

(*R3 IS DELETED FROM THE PARTY ARRAY AS ORDERED ON
6.4.2010 IN I.A.NO.868/2010.)

R,R2 BY ADV. SRI.MATHEWS JACOB (SR.)
R,R2 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

M.A.C.A No.428 of 2003-D

Dated this the 10th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The grievance raised by the appellant in this appeal is that the he did not get an effective opportunity to contest the matter. The learned counsel for the appellant submitted that the counsel for the appellant before the Tribunal was appointed as a Special Prosecutor in a criminal case and the date on which the award was passed, the appellant and his counsel could not appear and the Tribunal passed the award by fixing Rs.12,500/- alone as compensation.

2. We have gone through the award. It is stated in para.3 that the case was repeatedly posted for trial and the appellant and his counsel were absent and no documents in support of the claim had been produced.

3. The learned counsel for the appellant submitted that the accident occurred while he was travelling as a pillion rider in a Scooter bearing Reg.No.K L P 4125 driven by one Shri Krishnankutty along the M.C Road on 16.09.1994. When they reached near Vazhappilly chira, the offending vehicle bearing Reg.No.K R K 3316 - a stage carriage, came from the opposite

direction in a high speed through wrong side of the road, hit the Scooter. The rider of the Scooter died on the spot itself. The appellant was thrown away from the Scooter and had sustained severe injuries. According to the appellant, he had sustained compound fracture to mandible and Maxilla and grievous cerebral injuries. He was unconscious for four days.

4. He was aged 23 years at the time of the accident and was employed in a hotel run by late Mr.Krishnankutty who drove the Scooter. The monthly income claimed is Rs.1,500/- and the total compensation claimed is Rs.1 lakh.

5. Before this Court, various documents have been produced along with I.A No.1150/2010 as Annexures A1 to A4 and Annexure A4 is a copy of the disability certificate, which shows the disability as 35%.

6. The learned counsel for the Insurance Company submitted that many of the aspects pointed out in the additional affidavit and the documents produced therein are only an exaggeration and the same do not tally with the injuries sustained.

7. Since both sides did not adduce evidence in the matter and the Tribunal had granted compensation without

going into the details of the injuries, period of treatment, the disability sustained, monthly income of the appellant and other factors, the award cannot be sustained.

8. Therefore we set aside the award and remand the matter for fresh consideration.

9. The learned counsel for the appellant prayed that the appellant may be permitted to file an application for amending the Original Petition for enhancing the claim amount even though the same is opposed by the learned counsel for the Insurance Company. Of course nothing in law stands in the way of the appellant in amending the application. It is for the Tribunal to pass appropriate orders after hearing the respondent. Since the accident is of the year 1994, we post the matter before the Tribunal for appearance of the parties on 06.04.2015. The Tribunal will take every effort to dispose of the matter within a further period of five months after the appearance of the parties.

The learned counsel for the Insurance Company further submitted that this appeal was dismissed for default on 14.06.2010 and was restored to file only on 28.06.2011 and the liability of the Insurance Company towards interest for the above

period may be waived. Ultimately if the Insurance Company is found to be liable to meet the liability for payment of compensation, the interest for the above period will stand waived. Parties will bear their costs in this appeal.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge