

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

MACA.No. 421 of 2005 (A)

AGAINST THE AWARD IN OPMV 836/1998 of MACT, IRINJALAKUDA DATED
07-07-2004

APPELLANT/PETITIONER:

NAZAR, S/O.HASSAN, VENATTU HOUSE,
ERIYAD VILLAGE, MADAVANA P.O., KODUNGALLUR TALUK.

BY ADV. SRI.PHILIP T.VARGHESE

RESPONDENTS/RESPONDENTS:

-
1. SATHEESAN, S/O.SANKARA NARAYANAN,
AVINIPPALLY HOUSE, SREENARAYANAPURAM VILLAGE, PANANGAD
KODUNGALLUR TALUK.
 2. P.A.SIMON, S/O.P.J.ANTONY,
PALLIKKARA HOUSE, KANIMANGALAM, THRISSUR.
 3. THE ORIENTAL INSURANCE COMPANY LTD.,
BRANCH OFFICE, P.B.NO.27, KODUNGALLUR.

R3 BY ADV. SRI.S.MAMMU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**

M.A.C.A.No.421 of 2005

Dated this the 2nd day of November, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellant was the claimant before the Motor Accidents Claims Tribunal, Irinjalakkuda. The claimant has preferred the petition before the Tribunal alleging that he was travelling as a pillion rider on a motorcycle bearing Reg. No.KL-7/3218 at 8.30 p.m. on 29-08-1996 through the Kodungallur-Pullut public road and when the motorcycle reached the western end of Pullut Bridge, the first respondent, rider of that motorcycle, in a negligent manner without taking reasonable care and caution applied sudden brakes seeing a trucker coming from the eastern side of that Bridge. As a result, the motorcycle turned towards right and fell down causing injuries to the claimant. The claimant

preferred the petition, claiming ₹1,50,000/- as compensation, making the rider of the motorcycle as the first respondent, its owner as the second respondent and its insurer as the third respondent. The respondents 1 and 2 did not contest the matter before the Tribunal. They were set ex parte. The third respondent contested the matter by filing a written statement as well as an additional written statement. They have denied the occurrence of the accident alleged by the appellant. The learned Tribunal, after elaborately considering the matter, found that the case pleaded by the appellant cannot be believed and hence, the claim petition was dismissed. Aggrieved by the dismissal of the claim petition, the appellant has preferred this appeal.

2. Heard Sri.Philip T. Varghese, the learned counsel appearing for the appellant, and Sri.S.Mammu, the learned counsel appearing for the third respondent Insurance

Company. Since the third respondent has admitted the insurance cover for the motorcycle allegedly involved in the accident, notice to the respondents 1 and 2 was dispensed with.

3. It is the definite case initially averred by the appellant before the Tribunal that at 8.30 p.m. on 28-08-1996 while he was travelling as a pillion rider on the motorcycle driven by the first respondent, he sustained injuries when the motorcycle fell down as a result of the negligent driving of the motorcycle by the first respondent. It is also the definite case of the appellant that, after the accident, he was taken to the Modern Hospital, Kodungallur. Ext.A5 is the Wound Certificate prepared at that Hospital. It can be seen from this document that the appellant was examined there at 9.40 p.m. on 28-08-1996. Auto and bike accident at Pullut is noted against the column for stating the

history and alleged cause of injury. A deep lacerated wound over upper 1/3 anterior aspect of right leg 5x2x3 c.m. and deformity of right leg are noted as the injuries in Ext.A5. It is also noted that x-ray showed comminuted fracture of right patella and comminuted compound fracture of right tibia - sub condylar. Two things are emerging from this document. (1) The appellant was examined at that Hospital at 9.40 p.m. on 28-08-1996. (2) The cause of injury stated at that time at the Hospital was auto and bike accident at Pullut. The cause of injury thus stated in Ext.A5 Wound Certificate does not support the case of the appellant regarding the cause of injury stated in his claim petition.

4. Kodungallur Police had registered a case in respect of the alleged accident on 31-03-1997. The case so registered by the police was based on Ext.A1 private complaint preferred by the appellant before the Judicial First

Class Magistrate's Court, Kodungallur. That complaint had been preferred by the appellant on 03-02-1997. The learned Magistrate sent that complaint to the Kodungallur Police for registering a case and investigation. Accordingly, Ext.A2 FIR had been registered and investigation had been conducted by the police. The police, after conducting investigation, charge-sheeted the first respondent alleging rashness and negligence on his part while he was driving the motorcycle as alleged by the appellant in his Ext.A1 complaint. The offences alleged against the first respondent were under Sections 279 and 338 of IPC. Ext.A6 is a copy of the Final Report so filed by the police after investigation. We have had the advantage of perusing the records in that criminal case viz., C.C. No.166 of 1997 on the files of the Judicial First Class Magistrate's Court, Kodungallur. In the criminal case, the first respondent pleaded guilty and, accordingly,

the learned Magistrate convicted him for the offences alleged against him and imposed sentences on him.

5. Whether such investigation conducted by the police and the submission of Final Report in that criminal case alleging the offences under Sections 279 and 338 of IPC and the pleading guilty in that criminal case by the first respondent can be accepted as proof supporting the case of the appellant enabling him to claim compensation for the injuries sustained by him? The appellant had specifically pleaded that the accident had occurred at 8.30 p.m. on 29-08-1996. He had so pleaded in his complaint filed before the Judicial First Class Magistrate's Court, Kodungallur. He had relied on the evidence of two witnesses namely, Vimalkumar and Prasanth for proving the offences alleged against the first respondent in the private complaint. Learned Magistrate sent that private complaint for

registering a case and investigation to the Kodungallur Police. The Kodungallur Police conducted investigation and filed Final Report before the court alleging the offences under Sections 279 and 338 of IPC against the first respondent as alleged by the appellant in his complaint filed before the Judicial First Class Magistrate's Court, Kodungallur. Therefore, the case pleaded by the appellant is that the accident had occurred on 29-08-1996. The case pleaded by him before the learned Magistrate by filing private complaint is also the same. The police, after conducting investigation, had also filed Final Report before the court alleging that the accident had occurred as alleged by the appellant at 8.30 p.m. on 29-08-1996. When these facts are seen, prima facie, one will be satisfied that the appellant had succeeded in establishing his case pleaded before the Tribunal. But on a closer examination of all the

relevant records and the evidence available in the case, the impression thus created will be changed.

6. The police had produced the original of Ext.A5 Wound Certificate along with the Final Report. This document clearly shows that the appellant was examined at the Modern Hospital, Kodungallur, at 9.40 p.m. on 28-08-1996. Ext.A7 Treatment Certificate issued from that Hospital and produced by the appellant before the Tribunal also shows that the accident had occurred on 28-08-1996. Ext.A8 is a Disability Certificate dated 23-05-2001 issued from the Medicare Hospital, Kodungallur, produced by the appellant before the Tribunal. This document also shows that the accident had occurred on 28-08-1996. If the case of the appellant that he had sustained the injuries on 29-08-1996 as pleaded in the claim petition and in Ext.A1 private complaint and as alleged by the police in the Final

Report filed before the court is accepted, these medical documents produced by the appellant in support of his claim cannot be believed. Because, these medical documents, in unequivocal terms, show that the accident had occurred on 28-08-1996.

7. The appellant was examined before the Tribunal as PW1. He maintained as he pleaded in his claim petition that the accident had occurred on 29-08-1996. He specifically denied that no accident had occurred on 28-08-1996. He was examined before the Tribunal on 06-11-2003. Thereafter, the appellant filed I.A.No.3202 of 2003 before the Tribunal on 13-11-2003 for amending the original petition in order to correct the date of accident as 28-08-1996. That application was allowed by the Tribunal. Thereafter, the appellant was recalled and re-examined. Then he deposed before the Tribunal that the date of

accident stated as 29-08-1996 was only a mistake on his part. If that be so, according to the appellant, the accident had occurred on 28-08-1996. Then, another question arises. He pleaded by filing a private complaint before the Magistrate's Court that the accident had occurred on 29-08-1996. In order to prove that fact he had cited two witnesses. Learned Magistrate forwarded that complaint to the police and, accordingly, the police had registered Ext.A2 FIR. The police, after conducting investigation, filed Final Report before the court alleging the offences under Sections 279 and 338 of IPC against the first respondent. In the Final Report, it is specifically alleged by the police that the accident had occurred on 29-08-1996. If that is the position, the investigation conducted by the police in the criminal case and the allegation made in the Final Report with regard to the date of occurrence of the accident are not supporting

the case of the appellant that the accident had occurred on 28-08-1996. After going through the entire records, we are left with the irresistible conclusion that the appellant pleaded a particular theory by preferring a private complaint before the local Magistrate's Court. That particular theory had been swallowed by the police and charge-sheeted the first respondent alleging the offences under Sections 279 and 338 of IPC as committed on 29-08-1996. Therefore, the so called investigation conducted by the police cannot be accepted as a true investigation even going by the case pleaded by the appellant by way of amending his original petition filed before the Tribunal. In that view of the matter, the support sought for by the appellant from the criminal case records for proving his case pleaded before the Tribunal cannot be accepted as a support to his case.

8. The two witnesses viz., Vimalkumar and Prasanth

named in Ext.A1 private complaint and cited as occurrence witnesses by the police in the Final Report are not persons residing in the locality. Ext.A3 is a copy of the Scene Mahazar prepared by the police in this case. Names of persons residing near the alleged place of occurrence are specifically noted in Ext.A3. The names of these two witnesses do not find a place in the Scene Mahazar. After re-examining the appellant before the Tribunal as already noted, the appellant has examined PW2 as an eye witness to the accident on his side. His name is Dharman. This witness was not questioned or cited by the police in the criminal case. PW2 claimed before the Tribunal that he had witnessed the accident. He stated that the accident happened on 28-08-1996. He also stated that he had not given any statement to the police. During the cross-examination, he admitted that he was not sure as to the

identity of the vehicle involved and the time of occurrence. Whether reliance can be placed on the evidence of this witness? PW2 claimed that he was residing near the place of occurrence. But his name does not find a place among the persons noted as residing near the alleged place of occurrence in Ext.A3. Moreover, the appellant himself has not cited PW2 as an eye witness in Ext.A1 private complaint preferred by him before the local Magistrate's Court. The police also has not cited him as an occurrence witness. He was not questioned also by the police. In view of all these facts, the evidence tendered by PW2 cannot be relied on for finding that the accident as alleged by the appellant occurred.

9. We shall also consider another aspect of the matter. Ext.A5 Wound Certificate is the document prepared at the earliest opportunity after the alleged accident. The case

pleaded by the appellant is that he suffered injuries in the accident at 8.30 p.m. on 28-08-1996. He was examined at the Modern Hospital, Kodungallur, at 9.40 p.m. on 28-08-1996 as evident from Ext.A5 Wound Certificate. It is specifically noted in this document that the cause of injury was auto and bike accident at Pullut. The doctor who prepared Ext.A5 had no special interest in the matter. The appellant does not have such a case also. When the appellant was examined initially, he had no case that he was unconscious while he was being examined at that Hospital at 9.40 p.m. on 28-08-1996. The Wound Certificate also does not say that the appellant was unconscious. We are not forgetting the fact that when the appellant was recalled and re-examined, he claimed that he was unconscious at the time of his examination at the Modern Hospital. This statement made by him at the fag end of the matter cannot

be accepted and acted upon. We have no reason to believe that he was unconscious at the time of examining him at the Modern Hospital Kodungallur at 9.40 p.m. on 28-08-1996. In view of these facts, the statement made in Ext.A5 Wound Certificate that the cause of injury was auto and bike accident at Pullut, assumes significance. No acceptable explanation has been offered by the appellant in respect of the cause of injury so stated. The police records also do not give any explanation for the statement so made in Ext.A5 even though they have produced that document along with the Final Report before the court. Another aspect also has to be considered here. The appellant preferred a complaint with regard to the alleged occurrence only after five months. The police did not register a case soon after the occurrence of accident even though 'RTA' (Road Traffic Accident) is noted in Ext.A5 Wound Certificate. There was delay in

registering the case by the police. That too only after receiving the private complaint from the court. The police simply swallowed the baseless case with respect to the date of occurrence of the accident pleaded by the appellant in the private complaint while charge-sheeting the first respondent alleging the offences under Sections 279 and 338 of IPC. The first respondent has readily accepted the case so alleged by the police by way of pleading guilty before the court. These are all facts and circumstances indicating that the case pleaded by the appellant cannot be accepted without a pinch of salt. Therefore, we cannot find fault with the finding of the learned Tribunal that the appellant could not prove his case. The suspicious circumstances explained by the learned Tribunal cannot be brushed aside. We find merit in the findings so entered by the learned Tribunal. Even after our own analysis in the light of the records before

us, we have no hesitation in holding that the appellant has failed to prove that he had sustained injuries as claimed by him in his original petition filed before the Tribunal or in Ext.A5 private complaint preferred before the local Magistrate's Court. The claim of the appellant for compensation naturally fails and hence, this appeal is dismissed.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

