

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

MACA.No. 725 of 2005 ()

AGAINST THE AWARD IN OPMV 1478/1999 of MACT MUVATTUPUZHA DATED
06-07-2004

APPELLANT(S) /APPELLANT:

NATIONAL INSURANCE CO.LTD
REP. BY ITS DEPUTY MANAGER, KOCHI REGIONAL OFFICE
T.P.CELL, M.G.ROAD, ERNAKULAM.

BY ADV. SMT.RAJI T.BHASKAR

RESPONDENT(S) :

1. SREEDEVI
AKKARACHITTOOR MANA, PERUMPILLYSSERRY, CHERPU P.O.
THRISSUR DIST.

2. P.K.GEORGE, S/O.P.U.KURUVILA,
PERUMPILLIL HOUSE, ELENJI.

3. RAMACHANDRAN NAIR, S/O.RATNAKARAN NAIR,
KODUPATHIL HOUSE, PIRAVAM.

4. UNITED INDIA INSURANCE COMPANY LTD.,
MUVATTUPUZHA.

5. GOPI.M.N., S/O.NEELAKANDAN NAIR,
MEENAMKOTTAYIL HOUSE, MANARY P.O., PAPRA
MUVATTUPUZHA.

6. SAJI, S/O.K.KUTTY,
CHERUKARAYIL HOUSE, KAKKAD, PIRAVAM.

BY SRI. JOHN JOSEPH VETTIKAD, SC., UNITED INSURANCE COMPANY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 13-11-2015, ALONG WITH MACA. 1977/2013, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

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M.A.C.A Nos.725 of 2005 & 1977 of 2013

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Dated this the 13th day of November, 2015

JUDGMENT

Abdul Rehim, J.

Both the above appeals arise out of a common Award passed by the Motor Accident Tribunal, Muvattupuzha in O.P (M.V) Nos.1478/1999 and 1456/1999. Through the impugned Award one more connected case, O.P(M.V) No.1460/1999, was also disposed of. The 6th respondent Insurance Company before the Tribunal is the appellant herein. Challenge against the Award is limited only to the extent of the findings arrived by the tribunal with respect to the negligence. Hence this court need to consider only the said aspect in these appeals.

2. The accident occurred on 23.05.1999 at about 7:15 p.m, when a Jeep and an Auto Rickshaw collided at the spot of the accident. The claimants in both the cases were passengers in the Auto Rickshaw, who sustained injuries. With respect to the accident the Police had registered a case in which the Driver of the Jeep was implicated as accused. Ext.A1 is the copy of the

F.I.R registered and Ext.A5 is the copy of the Final Report (Charge Sheet) submitted. Evidently, the Driver of the Jeep was acquitted in the criminal case. When the petitioner in O.P No.1478/1999 was examined as P.W.1, she deposed that the accident occurred when the Jeep collided with the Auto Rickshaw. According to her, the Jeep hit on the left side of the Auto Rickshaw and she sustained injuries. She had re-iterated that the accident occurred when the Jeep hit on the Auto Rickshaw, at the western tarred portion of the road at the spot. The F.I.R was registered based on an intimation received from the Hospital where the injured persons were admitted. Ext.A2 is the copy of the Scene Mahazar prepared by the Police on the second day of the accident, i.e., on 25.05.1999. It would indicate that the width of the tarred portion of the road at the spot is 10.64 Metres and the exact spot of the collision is identified at a distance of 2.89 metres from the eastern tarred end of the road towards west. The Scene Mahazar would also indicate that the Auto rickshaw had sustained damages on its left side and that the Jeep was having scratches and dents on the left side, exactly on the left mud guard. Exts.A3 and A4 are the Inspection

Reports of the vehicles, which were prepared by the Motor Vehicle Inspector. Those reports also would tally with the damages of both the vehicles as noticed in Ext.A2 Mahazar. The Head Constable who prepared Ext.A2 Mahazar was examined before the Tribunal as P.W.3. He deposed before the Tribunal that the collision was at a spot at 2.89 metres from the western tarred end of the road towards east. He said that the location mentioned in Ext.A2 is not correct and he had prepared a report to that effect, copy of which is marked as Ext.X1(a). At the same time, Ext.X1(b) Case Diary produced before the Tribunal would indicate that the Sub Inspector of Police who had investigated the case had verified Ext.A2 Scene Mahazar, on 26.05.1999, and found it to be correct. However, the Tribunal observed that the final report was submitted on the basis of Ext.A2 Mahazar. So the testimony of P.W.3 to the effect that he has sent a further report cannot be accepted as true, is the findings.

3. While deciding the question of negligence, the Tribunal found that the damages sustained by the vehicles would indicate that the left front side of the Jeep had hit on the left side of the Auto Rickshaw and that the Auto Rickshaw has gone to the

wrong side. The Tribunal also found that the Driver of the Auto Rickshaw was not having Licence to drive the vehicle, as borne out from Ext.A5. Therefore the Tribunal had arrived at a conclusion that the accident occurred due to negligence of the Driver of the Auto Rickshaw. Therefore, it is found that the accident occurred due to the negligence of the 5th respondent alone, who was the Driver of the Auto Rickshaw, bearing No.KL-7 K 4137. On the basis of such findings, the Tribunal directed the appellant company to make payment of the entire compensation awarded, subject to reserving their right to recover such compensation from the Owner and Driver of the Auto Rickshaw.

4.Conclusions and findings arrived by the Tribunal with respect to the aspect of negligence that the Driver of the Auto Rickshaw was responsible for causing the accident, is assailed by the appellant. It is contended that, considering the fact that the Auto Rickshaw was hit on its left side by the left front side of the Jeep, the spot of accident could only be on the western side of the road. Therefore it is contended that the evidence adduced by P.W.3 to the effect that the spot of accident was 2.89 metres

away from the western tarred end, ought to have been accepted. It is the argument of the appellant that the above aspect would be supported by the fact that the criminal case was registered and charge sheeted only against the Driver of the Jeep.

5. Per contra, learned counsel for the 4th respondent company would content that, the spot of accident mentioned in Ext.A2 is correctly noted and the fact that the Auto Rickshaw had gone to the extreme wrong side is evident from the Scene Mahazar. According to him, the Driver of the Jeep was wrongly implicated in the case, without considering the exact spot of accident noticed in the Scene Mahazar. Merely because of the fact that the persons who had sustained injuries are passengers of the Auto Rickshaw, the Driver of the Jeep was implicated. Learned counsel for the 4th respondent contended that, even if the contention that the spot of accident was on the western side is accepted, no fault can be found on the driver of the Jeep because the Jeep which was proceeding through the eastern side could not traverse up to the spot marked, which is only 2.89 metres from the western tarred end. This contention is raised specifically drawing attention of this court to the fact that the left

front side of the Jeep hit on the Auto Rickshaw, which is not at all possible.

6. Learned counsel for the appellants have placed reliance on a judgment of this court in **New India Assurance Company Ltd. V Pazhaniammal (2011(3) KLT 648)**. It is held therein that, when a charge sheet is filed the Tribunal should give further opportunity to others also to adduce oral evidence and in such a case the charge sheet will pale into insignificance and the dispute will have to be decided on the basis of the evidence. In all other cases such charge sheet can be reckoned as sufficient evidence of negligence, in a claim under Section 166 of the Motor Vehicles Act. The court further found that, on production of the charge sheet the shifting of the burden takes place. The judicial recognition of such a practice will help the tribunals to ensure the optimum use of judicial time at their disposal for productive ventures. However this court warned that it does not intend to say that collusive charge sheets need be accepted. But on the facts of a given case when the Tribunal feels that the police charge sheet does not satisfy its judicial conscience , the Tribunal can record that the charge sheet cannot be accepted

and can call upon the parties to adduce oral evidence with respect to the accident and the alleged negligence. In such cases the issue regarding negligence must be decided on other evidence, ignoring the charge sheet. Learned counsel for the 4th respondent also had placed reliance on the very same decision to canvass his contentions.

7. When analyzed the facts of the case based on the above legal principle, it is to be primarily found that, the Driver of the Jeep is at negligence, going by the charge sheet. But it is to be noticed that going by the contents of Ext.A2 Scene Mahazar, the version that the Driver of the Jeep was negligent in causing the accident could not be accepted. This is because of the fact that the Mahazar would indicate that the spot of accident is only 2.89 metres from the eastern tarred end. If that is to be accepted, it is evident that the Auto Rickshaw was totally on the wrong side. But there also a discrepancy may arise, because damages sustained to the Jeep is on the left front side and the damages sustained to the Auto rickshaw is on its left side. On the other hand, if the oral evident of P.W.3 is to be accepted, it can prima facie be concluded that the Jeep was on the wrong side and its

Driver was at negligence. But there also a discrepancy may arose because the left front side of the Jeep had hit on the left side of the Auto rickshaw, which could not be normally possible. The Tribunal was not fully right in fixing the negligence solely on the part of the Driver of the Auto Rickshaw. Presumably the Tribunal had taken such a view because the damage sustained to the Auto Rickshaw is on the left side. Eventhough it is not mentioned by the Tribunal that the Auto Rickshaw might have fone to the eastern side of the road, i.e. to its wrong side, the Tribunal might have taken such an inference. But there also a discrepancy may arise since it is to be noticed that the hit of the Jeep on the Auto Rickshaw was on its left side.

8. From a total appreciation of evidence on record, we are of the considered opinion that the prima facie evidence based on Ext.P5 charge sheet, with respect to negligence on the part of the Driver of the Jeep, stands rebutted in view of the contents of Ext.A2 Scene Mahazar. This court also concur with the view taken by the Tribunal to the effect that the oral evidence of P.W.3 could not be accepted since there is no probability at all that the accident occurred at 2.89 metres from the western side,

when compared with the damages sustained to both the vehicles. This is also because of the fact that Ext.A2 Mahazar would indicate that at the time of preparing the said document both the vehicles were seen lying on the eastern side of the road in question. Hence in all probability, considering the evidence available on record, this court is inclined to hold that the charge sheet as such cannot be relied upon and it is not justifiable to satisfy the judicial conscience of this court that the accident occurred solely due to negligence on the part of the driver of the Jeep. But the question remains as to whether the negligence can solely be attributed against the Driver of the Auto Rickshaw. Exts.A3 and A4 documents with respect to damages on the vehicles as well as the description of such damages contained in Ext.A2, would clearly persuade this court to take a different view. Even assuming that the Auto Rickshaw had gone to the eastern side (wrong side), the fact that the left front side of the Jeep hit on the left side of the Auto Rickshaw would indicate that there is every chance that the Jeep was at a tremendous speed and its Driver could not have stopped the vehicle within a reasonable limit, in order to avoid hitting on the Auto Rickshaw.

We are of the considered opinion that the principle 'res ipsa locutor' can be applied on the facts of the case. The circumstances speaks of itself that Drivers of both the vehicle were negligent in causing the accident and had contributed their negligence.

9. Under the above mentioned circumstances this court is inclined to arrive at a conclusion that the accident in question occurred due to contributory negligence of the Drivers of both the vehicles. Since there is no clear cut basis available to apportion the contribution of negligence, other than an equal share, we fix the liability equally on both the vehicles.

10. In the result, the appeals are allowed in part. The impugned common Award of the Tribunal will stand modified to the extent of finding that the accident occurred due to contributory negligence of the Drivers of Jeep No. KL-7E-5485 and Auto Rickshaw No. KL-7K-4137. It is held that both the owners are liable to make payment of the compensation awarded by the Tribunal, to the respective claimants. Since both the vehicles were insured by the appellant and the 4th respondent company, the liability has to be shared by both the companies on

equal basis. It is made clear that the appellant will be entitled to recover the share of compensation paid by them from the owner of the Auto Rickshaw bearing No. KL-7K-4137, since it is proved that the Driver was not holding a valid licence.

Both the companies are directed to make payment of their respective share of the amount awarded, within a period of one month from the date of receipt of a copy of this judgment. Needless to observe that the claimants will be entitled to withdraw such amount from the Tribunal, immediately on deposit of the amounts.

Sd/-
C.K .ABDUL REHIM, JUDGE

Sd/-
MARY JOSEPH, JUDGE

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