

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

MACA.No. 296 of 2012 ()

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(AGAINST THE AWARD IN OP(MV).NO. 1174/2010 OF PRINCIPAL MOTOR ACCIDENTS
CLAIMS TRIBUNAL, KOZHIKODE DATED 16-08-2011)
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APPELLANT/PETITIONER IN THE OP(MV) :

**P.T.RAJAN,
S/O. VELAYUDHAN NAIR, AGED 46 YEARS,
PADINJARE THACHAMPATH, PERUVAYAL, KOZHIKODE.**

**BY ADVS.SMT. LATHA PRABHAKARAN
SRI.K.M. JAMALUDHEEN**

RESPONDENT(S)/RESPONDENTS IN OP(MV) :

- 1. HARI KUMAR.T.P.,S/O. PRABHAKARAN,AGE NOT KNOWN,
RESIDING AT 3/187, THALAPPALIL (H),
MANAKADAVE, MUKKADA, ALAKODE,
THALIPARAMBA, KANNUR - 670 571.**
- 2. JOSEKUTTY, S/O. ANTONY, AGE NOT KNOWN,
RESIDING AT PUTHENPURAKKAL (H),
MAROTTICAL.P.O, THRISSUR -680 014.**
- 3. LINEESH, S/O. PAUL,AGE NOT KNOWN,
RESIDING AT MAPRANATHUKARAN (H),
MAROTTICAL.P.O, THRISSUR - 680 014.**
- 4. THE SHRIRAM GENERAL INSURANCE CO. LTD.,
10003-E-8, RICO INDUSTRIAL AREA, SITAPURA,
JAIPUR, RAJASTHAN - 302 001.**

**R1 BY ADV. SRI.RAJIT
R3 BY ADV. SRI.K.B.RAJESH
R4 BY SRI.MATHEWS JACOB,SENIOR ADVOCATE
ADV. SRI.P.JACOB MATHEW**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESH KUMAR, J.

M.A.C.A.No.296 of 2012

Dated this the 5th day of August, 2015

JUDGMENT

The claimant in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal in dismissing the claim petition.

2. The claimant sustained injuries in the accident took place on 25.3.2010, involving a lorry bearing Reg.No.KL-13-P/5441 owned by the first respondent and driven by the second respondent. The fourth respondent was the insurer of the said lorry. The Tribunal dismissed the claim petition holding that the claimant had not impleaded the owner and driver of the vehicle involved in the accident. The claimant is aggrieved by the said decision of the

Tribunal.

3. In column No.10 of the claim petition, the claimant had stated that he was travelling in another lorry bearing Reg.No.KL-13/D-5774 from Mavoor to Kozhikode at the time of accident. In column No.28 of the claim petition, the claimant had also stated that when the vehicle in which he was travelling reached the place called Thengilakavu, the lorry bearing Reg.No.KL-13/P-5441 which came from the opposite direction in a rash and negligent manner hit against the lorry in which he was travelling. Ext.A1 is the first information report in the case registered in connection with the accident. Ext.A1 case is seen registered against the second respondent, the driver of the vehicle bearing Reg.No.KL-13-P-5441. Ext.A3 is the charge sheet in Ext.A1 case. Ext.A3 indicates that the police, after investigation, came to the conclusion that the accident occurred on account of the negligence of the second respondent. It is seen that there was a mistake in the fact stated by the

claimant in column No.28 of the claim petition. In the said column, the claimant had stated at one place that the accident occurred on account of the negligence of the driver of the vehicle bearing Reg.No.KL-13/D-5774 and that respondents 1 and 2 are the owner and driver of the said vehicle respectively. The fact that the said statement in column No.28 is a mistake is evident from the remaining statements in the claim petition itself. Respondents 1 and 2 are the owner and driver of the lorry bearing Reg.No.KL-13/P-5441, the offending vehicle. The impugned award is seen passed by the Tribunal under the mistaken impression that respondents 1 and 2 are the owner and driver of the lorry bearing Reg.No.KL-13/D-5774 respectively. The impugned award, in the said circumstances, is liable to be set aside.

In the result, the appeal is allowed, the impugned award is set aside and O.P(M.V)No.1174 of 2010 is remitted to the Motor Accidents Claims Tribunal, Kozhikode for fresh

disposal. The parties shall appear before the court below on 30.9.2015.

P.B.SURESH KUMAR, JUDGE.

smm