

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

MACA.No. 1443 of 2006 ()

AGAINST THE AWARD IN OPMV 1524/2002 of MACT MUVATTUPUZHA DATED
28-01-2006

APPELLANT/5TH RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD.,
REPRESENTED BY ITS ADMINISTRATIVE OFFICER
METRO PLACE, OPP.NORTH RAILWAY STATION, ERNAKULAM.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS/RESPONDENTS 1 TO 4 & PETITIONERS:

1. JOY, S/O.ULAHANNAN, VETHATHU HOUSE,
THIRUMARADY P.O., KOOHATTUKULAM.

2. C.V.ISSAC, CHOORALIL HOUSE,
PAMPAKUDA P.O.

3. THE MANAGER, UNITED INDIA INSURANCE
CO., MUVATTUPUZHA BRANCH.

4. T.J.THOMAS, THUZHAPPILLIL,
THIRUMARADY P.O.

5. AUGUSTY, S/O.ULAHANNAN,
THADATHILPUTHENPURAYIL, KAKKOOR P.O.
KOOHATTUKULAM (VIA).

6. THRESIAKUTTY AUGUSTY, THADATHILPUTHEN-
PURAYIL, KAKKOOR P.O., KOOHATTUKULAM (VIA).

R5&6 BY ADV. SRI.GEORGE SEBASTIAN
R3 BY ADV. SRI.JOHN KOSHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.Nos.1443 & 2092 OF 2006

Dated this the 19th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals are respectively filed by the claimants and one of the Insurance Companies who was 5th respondent before the Tribunal. The claimants approached the Tribunal seeking for compensation for the death of their son in an accident involving a scooter as well as a car. The deceased Jaison was riding a scooter bearing Reg.No.KL-7K/8601 on 24.4.2002. The allegation is that the car which was coming from the opposite direction collided with the scooter and the deceased sustained injuries. He was removed to the Medical Mission Hospital, Kolenchery and he succumbed to the injuries on the next day.

2. The Tribunal considered various aspects and entered a finding as against the case of the claimants that the vehicle namely the motor cycle was hit by the car. The evidence let in by the claimants will show that they have produced police records as well as the

documents from the hospital to claim compensation.

3. The learned counsel for the appellant in M.A.C.A.No.2092/2006 submitted that the view taken by the Tribunal that the car was not involved in the accident is not correct. It is submitted by relying upon FIR -Ext.A1 and Ext.A2 charge sheet that the first respondent before the Tribunal was arrayed as accused for various offences under the Indian Penal Code as well as under the Motor Vehicles Act. Therefore prima facie proof of negligence was there.

4. In paragraph 10 the Tribunal did not fully agree with the final report for certain reasons. The observation made by the Tribunal is that in Ext.A4 Accident Register cum wound certificate, it is shown as fall from a bike on 24.4.2002. The Tribunal also observed that there is no mention in Ext.A4 as regards the involvement of the car. Another observation made by the Tribunal is that in the report of inspection of the car, no damage is seen sustained and if actually there was a head on collision of the vehicles, the car would have sustained damage. Of

course the same may depend upon the point of impact as well as the speed with which the vehicles were being driven at the appointed time. We are not going into those details, since the prayer is to remand the case for fresh consideration.

5. The learned counsel for the appellant in M.A.C.A.No.2092/2006 submitted that if an opportunity is given, the appellants will be able to adduce evidence in support of the occurrence by examining the officer who conducted investigation or any other competent police personnel. The request is made in the light of the observation made by the Tribunal that nobody has been examined.

6. Of course, the decisions of this Court and the Apex Court are to the effect that prima facie negligence can be established by the claimants before the Tribunal by producing the police charge. Even then the learning counsel submits that the appellants are prepared to examine the police officials concerned. Apart from the same, the Tribunal has not assessed the compensation also. Learned counsel for the Insurance Company supported the findings.

7. We, therefore, think it proper to remand the matter for fresh consideration. As far as M.A.C.A.No.1443/2006 is concerned, the challenge is against the compensation granted by invoking Section 140 in the award. It is submitted by the learned counsel for the appellant that in the light of the stand taken by the Insurance Company that the policy is an Act Only Policy they cannot be made liable for meeting the same. Since we are setting aside the judgment and remanding the matter, we delete the said portion also.

Accordingly, the award is set aside and the matter is remitted back for fresh consideration. Both sides are allowed to adduce evidence on all aspects. The parties will appear before the Tribunal on 27.04.2015. We also direct the Tribunal to dispose of the matter finally within a period of five months after the appearance of parties.

T.R.RAMACHANDRAN NAIR, JUDGE

P.VASHA, JUDGE

SV.