

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

MACA.No. 1102 of 2012 ()

AGAINST THE AWARD IN OPMV 473/2007 of M.A.C.T., MANJERI DATED
24-11-2011

APPELLANT/PETITIONER:

PALANISAMI @ PALANICHAMI
S/O.VEERAPPATHEVAR, NADA G N PUTHUR, DOOR NO.39/6
NELLOTHKULI-P.O., POLLACHI, BIMMANKUNNU VILLAGE
TAMILNADU.

BY ADV. SRI.P.VENUGOPAL (1086/92)

RESPONDENTS/RESPONDENTS:

1. RAVI
S/O.SENGODAN, C.S.PURAM, RESIPURAM.P.O.
NAMAKKAL DISTRICT, TAMILNADU - 637001

2. D.SELVAM
S/O.DURASAMI, KUTTAI MALAI STREET, R.P.PUTHUR
NAMAKKAL, TAMILNADU - 637001

3. NEW INDIA ASSURANCE COMPANY LIMITED
DIVISIONAL OFFICE, NO.2, G.N.CHETTY ROAD
T.NAGAR, CHENNAI, TAMILNADU - 600017

R3 BY ADV. SRI.PMM.NAJEEB KHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.No.1102 OF 2012

Dated this the 11th day of August, 2015

JUDGMENT

Jyothindranath, J.

This appeal is filed by the claimant in O.P.(MV)No.473/2007 on the file of the Motor Accidents Claims Tribunal, Manjeri. The appeal is preferred against the quantum of compensation awarded by the Tribunal as well as challenging the finding on the negligence. The facts are as follows :

A motor vehicle accident occurred on 28.12.2006 on Mannarkad – Perinthalmanna road. The vehicles involved in the accident are a mini lorry and a lorry. The appellant herein is the driver of the mini lorry.

2. Alleging negligence on the side of the lorry, he filed a claim petition before the Tribunal. He produced the copy of the FIR as well as the copy of the Statement of the appellant before the Tribunal to show negligence. The accident being allegedly a head on collision, the

Tribunal in the absence of other materials, found that both the drivers are equally responsible for the accident i.e. the negligence is apportioned as 50% that of each drivers. The said finding is under challenge before this Court. Apart from the same, the quantum of compensation awarded is also under challenge.

3. The learned counsel for the appellant submitted before us that the police, after a thorough investigation filed charge against the driver of the lorry who was arrayed as respondent No.1. It is the further submission that this Court held in **New India Assurance Co. Ltd. v. Pazhaniammal (2011 (3) KLT 648)** that when charge is filed against a particular driver, in the absence of other material or evidence, it can be presumed that the said person is negligent and caused the accident.

4. A copy of the Police charge is produced before us for perusal. The said document is also given to the learned counsel for the Insurance Company for perusal. The accident occurred in the year 2006. After going through the said document and considering all the other materials before the court, we feel that it will be only just and

proper to come to a conclusion that the accident occurred due to the negligence of the driver of the lorry who was arrayed as respondent No.1 in this appeal.

5. The next point to be considered is regarding the quantum. The learned counsel for the appellant submitted before us that here is a case where the appellant sustained very severe abdomen injury. It is also submitted before us that he was treated as an inpatient for 18 days. He sustained blunt stomach injury and there was massive haemoperitoneum. Ext.A5 will show that there was development of gangrene mild ileal segment in the stomach and he had undergone laparotomy and the blood accumulated in the stomach was removed. Surely, the appellant was in the hospital for 18 days and had undergone a major operation as evident from Exts.A4 and A5.

6. The learned counsel for the Insurance Company submitted before us that in this case no disability has been caused. It is also the submission that only because he was hospitalized for 18 days, it cannot be assumed that the injury was so severe. The Tribunal after considering all these aspects awarded the compensation and in respect

of the quantum no interference is warranted.

7. We have perused the compensation awarded on various heads. It can be seen that even though the accident occurred in the year 2006, towards pain and suffering, only a sum of ₹6,000/- is seen awarded. It is on a lower side which can be enhanced to ₹20,000/-. Apart from this count, the compensation awarded under the head of bystander's expenses is only ₹1,800/-. If ₹200/- is considered for expenses towards daily bystander, he will be entitled for a sum of ₹3,600/-. On perusal of the amount granted under other heads, we feel that interference on other heads is not warranted.

8. Accordingly, the compensation is refixed as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Medical expenses	46292
Pain and suffering	20000
Bystander's expenses	3600
Transportation	500
Damage to clothing	250
Loss of earnings	10500

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Total	81142 Rounded off to ₹ 81,150 (Rupees eighty one thousand one hundred fifty only)

9. Since it is found that the accident occurred due to the negligence of the first respondent, the Insurance Company who is arrayed as respondent No.3 shall deposit the balance compensation with interest within three months of this order. On deposit, the appellant will be entitled for release of the amount.

The appeal is accordingly allowed. The parties shall bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.