

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 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

MACA.No. 1354 of 2012 ()

IN OPMV 1113/2005 of M.A.C.T., ATTINGAL DATED 16-04-2012

APPELLANT(S)/APPLICANT:

**THANKAMANI AMMA
AGED 48 YEARS, KALLARA VILAKATHU VEEDU, KUTHIKULAM.P.O
VEMBAYAM, NEDUMANGADU**

**BY ADVS.SRI.R.T.PRADEEP
SRI.J.ROBINSON**

RESPONDENT(S)/RESPONDENTS:

- 1. K.BABU
VILAYIL PUTHEN VEEDU, SEEMAVILA, PULIMATH
KODUVAZHANNOOR.P.O - 695 612.**
- 2. THE MANAGER
UNITED INDIA INSURANCE CO. LIMITED,
ASH HAR COMPLEX
PALACE ROAD, ATTINGAL -695 101.**

**R2 BY ADV. SRI.A.A.MOHAMMED NAZIR
R BY SRI.JOHN JOSEPH VETTIKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 18-08-2015, ALONG WITH MACA. 1372/2012, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

VS

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

M.A.C.A.Nos.1354 &1372 of 2012

Dated this the 18th day of August, 2015

JUDGMENT

T.R.Ramachandran Nair, J.

These appeals have been filed by the respective appellants aggrieved by the awards passed by the Motor Accidents Claims Tribunal, Attingal in O.P(MV). No.1113/2005 and O.P.(MV).No.1114/2005 respectively. Since both the cases arose out of the same accident, we heard the counsel for the parties together and the appeals are being disposed of accordingly.

2. We heard Sri.R.T.Pradeep, learned counsel for the appellant and Sri.Mohammed Nazir learned counsel for the insurance company.

3. The petitioners alleged that they sustained injuries in an accident which occurred on 20.02.2005 while they were travelling in an autorikshaw bearing Reg.No.KL-01/P-4927. It is alleged that when they reached near

Kanakode along the M.C.Road between Vembayam - Nalanchira, the autorikshaw capsized at 5.30 p.m. and they sustained grievous injuries.

4. The appellants have adduced evidence by producing Exts.A1 to A8, which include Ext.A1 the copy of the F.I.R., Ext.A2 the copy of the scene mahazar, Ext.A3 copy of the charge sheet, Exts.A4 and A5 copies of the treatment certificates, Ext.A6, A7 and A8 the casualty cards. No evidence has been adduced on the part of the respondents.

5. The learned counsel for the appellants submitted that the reason stated by the Tribunal for not believing the case of the applicants is not correct. We find from the discussion on point No.1 that the criminal cases were registered on the basis of the order passed in CMP.No.3990/05, a complaint under Section 156(3) of the Code of Criminal Procedure. The Tribunal was of the view that even going by the treatment certificate, they have sustained fracture calcaneum left and bimalleolar fracture left ankle. It was observed that the claimants have not

been treated as inpatient in the hospital. It is also stated that neither any X-ray, nor any prescription for calcaneum fracture has been produced. This was the important aspect which led to the Tribunal in rejecting the claim petitions.

6. We have perused the documents produced in evidence and heard learned counsel on both sides. The learned counsel for the insurance company submitted that the views taken by the Tribunal cannot be said to be faulty. The learned counsel for the appellants submitted that if the Tribunal wanted to elicit any item of information either with regard to the accident or with regard to the treatment undertaken, the party should have been asked to adduce the evidence, produce documents or even the hospital records could have been summoned. We agree with the above contention.

7. Now that the Tribunal has decided the matter only with the available evidence, it is clear that the parties will be prejudiced. There is ample power for the Tribunal to call for the documents or to summon the police

officers or to get the necessary treatment records from the hospital.

Therefore, we set aside the award and allow the appeals. The respective cases are remanded back to the Tribunal for fresh consideration. Both sides are allowed the opportunity to adduce evidence and the Tribunal will pass a fresh award after considering various aspects and we permit the Tribunal to expedite the proceedings and to dispose of the matter within a period of six months. Parties will appear on 12.10.2015 in the Tribunal.

Sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE

Sd/-
K.P.JYOTHINDRANATH,
JUDGE

VS

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PA TO JUDGE