

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

MACA.No. 1475 of 2012 ()  
-----

AGAINST THE AWARD IN OPMV 1828/2004 of M.A.C.T.,ATTINGAL DATED  
25-05-2012

APPELLANT/APPLICANT:  
-----

PREMJITH @ PREMJITH P.NAIR  
VILAYILPUTHEN VEEDU, NELLANADU, VENJARAMMUDU  
MANIKKAL.

BY ADV. SRI.R.T.PRADEEP

RESPONDENTS/RESPONDENTS  
-----

1. RENJITH  
RENJINI BHAVAN KOTTAUKONAM, VAYYATTE, VENJARANMMUDU  
695 001.

2. THE MANAGER  
NEW INDIA ASSURANCE CO. LTD., DIVISIONAL OFFICE  
KOTTARATHIL BUILDING, PALAYAM, THIRUVANANTHAPURAM.  
695 001

R2 BY ADV. SRI.M.RAJAGOPALAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

-----  
**M.A.C.A.No.1475 OF 2012**  
-----

Dated this the 12<sup>th</sup> day of August, 2015

**JUDGMENT**

Jyothindranath, J.

This appeal is preferred by the claimant in O.P.(MV) No.1828/2006 on the file of the Motor Accidents Claims Tribunal, Attingal. The Tribunal dismissed the claim petition. The facts in a nut shell are that the appellant sustained grievous injuries in a motor vehicle accident which occurred on 16.8.2004. It is the case of the appellant that he was a pillion rider on the motor cycle bearing Reg.No.KL-01 Y/ 1182 which capsized due to the negligence of the rider of the bike. He moved compensation claim before the Tribunal which was dismissed by the Tribunal. Aggrieved by the above order of dismissal, this appeal is preferred.

2. When the appeal came up for hearing, the learned counsel for the appellant submitted before us that in this case even though the

appellant produced the copy of the FIR, scene mahazar as well as the copy of the charge sheet, the Tribunal even doubted the accident and dismissed the application. It is the submission that after a thorough investigation, police filed charge against the rider of the bike. It is also submitted before us that the Tribunal should have followed the decision of this Court in **New India Assurance Co. Ltd. v. Pazhaniammal (2011 (3) KLT 648)**.

We heard the learned counsel for the Insurance Company. The learned counsel for the Insurance Company submitted before us that even though the accident is admitted, the Company got a case that they are not liable as the policy is only an Act only policy and the claimant is only a gratuitous passenger.

After going through the award and the reasoning, we are of the opinion that this is a matter where the impugned award has to be set aside. Thus the impugned award is hereby set aside and the matter is remanded back to the Tribunal for fresh disposal. It is made clear that all the findings of the Tribunal on all aspects and points are hereby vacated. The parties shall bear their costs in the appeal. On receipt of

the certified copy of the award, the Tribunal shall expedite the disposal.

**T.R.RAMACHANDRAN NAIR, JUDGE**

SV.

**K.P.JYOTHINDRANATH, JUDGE**