

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

M.A.C.A.No. 87 of 2015 ()

AGAINST THE AWARD IN OPMV 579/2010 OF M.A.C.T,EKM DATED 06-08-2012

PETITIONER/APPELLANT:

C.K.DIVAKARAN AGED 75 YEARS
S/O.KOCHUKUTTY, CHANGANATH, KANNACHANTHODE
KOCHI-18.

BY ADV. SRI.M.S.UNNIKRISHNAN

RESPONDENT(S)/RESPONDENTS:

1. ANOOP JOY
KOLARIKKAL HOUSE, SOUTH CHITTOOR P.O.
CHERANELLOOR VILLAGE, NEAR CHITTOOR FERRY.
2. NATIONAL INSURANCE COMPANY LTD.
BRANCH OFFICE, CHITTOOR ROAD, SOUTH JUNCTION
KOCHI-16.

R2 BY ADV. SMT.DEEPA GEORGE
SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No. 87 of 2015

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Dated this the 5th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(MV). No.579 of 2010 on the file of the Motor Accidents Claims Tribunal, Ernakulam. The respondents are respondents 1 and 2 respectively therein. By award passed on 6.8.2012, the Motor Accidents Claims Tribunal dismissed the claim petition filed by the appellant on the ground that the owner and driver of the motor bike involved in the accident have not been impleaded and that the pleadings and the evidence in the case are contradictory. The claimant has, aggrieved thereby, filed this appeal. The brief facts of the case are as follows:

2. The appellant instituted O.P(MV) No.579 of 2010 before the Motor Accidents Claims Tribunal, Ernakulam on 16.08.2009. He had in column No.15 of the application stated that the motor vehicle involved in the accident was a Hero Honda bike bearing registration No.KL-7AV-2483. In column 16 of the application the name and address of the owner of the said motor bike is given as Anoop Joy, S/o Joy, Kolarikkal (H), South Chittoor P.O., Cheranalloor. In column 18, he had stated that the National Insurance Company Limited, Chittoor Road, South

Junction, Kochi-16 is the insurer of the vehicle. In column 28 of the application he had inter alia stated as follows:

"1. It is submitted that during May, 2008 I was working as Assistant of the Security staff appointed by Federal Bank to its ATM Counter situated at Kannachanthodu Junction. I was also working as a Coolie in the shop of Raju who is dealing with table and chairs on daily rate basis. Petitioner used to carry the chairs and table to the neighbouring houses on demand and used to take them back. On 20.5.2008 at about 6.30 pm, I had to give table and chairs to a house situated on the western side of Chittoor Road, on the southern side of the Kannachanthodu Junction. When I was returning after giving the table and chairs, to my house, I had to cross Chittoor Road. When I reached almost the eastern margin of the Chittoor Road, the motor bike bearing Regn. No. KL 7 AV 2483 came in a rash and negligent manner and hit on my right leg. As a result of the hit, I fell on the road. I sustained injuries on right leg, right hand and had abrasion all over the body. Blood started dozing from the injured parts of the petitioner's body. The persons who witnessed the incident took the petitioner to Medical Trust Hospital, Ernakulam. I was admitted in the Hospital. On X-ray examination it was found that bone of my right leg and wrist of the right hand were subjected to injuries. It had fracture as well. The right leg was subjected to a surgery and steel rod was inserted. I had to remain in the hospital almost till 24.6.2008. Even after that I was not in a position to move freely. I am without any job right now. I am depending upon my children for my sustenance. The accident occurred due to the negligence of the 2nd respondent-Driver of the vehicle.

2. It is submitted that first respondent is the driver and owner and the second respondent is the insurer at the time of accident. There is a valid coverage of policy."

3. He had also joined the respondents herein viz; Anoop Joy and National Insurance Company as the respondents and their names and addresses were shown in the cause title. However, underneath the name and address of the first respondent, in the cause title of the application, the claimant had described the first respondent as the owner of KL-07 J-3420, a passenger bus. Upon receipt of summons,

the second respondent insurer entered appearance and filed a written statement wherein, in paragraph 4 it admitted the fact that the motor bike bearing registration No. No.KL-7-AV-2483 was insured with it. The second respondent however denied the averment in the claim petition that the first respondent in the claim petition had driven the motor bike in a rash and negligent manner. It was also contended that the alleged accident happened due to the negligence of the petitioner who crossed the road without taking care. Alternatively it was contended that the claimant is guilty of contributory negligence. The first respondent, who was impleaded in the claim petition as the owner and driver of the motor bike did not enter appearance.

4. By the impugned award, the Motor Accidents Claims Tribunal dismissed the claim petition on the short ground that the claim petition has been prepared and filed in an irresponsible manner and that the pleadings and the evidence are contradictory to each other. The Tribunal has also pointed out the fact that though in the claim petition, the motor vehicle involved in the accident is described as a bike, in the cause title, beneath the name and address of the first respondent, it is stated that he is the owner of a bus. The appellant/claimant has, as stated earlier, filed this appeal aggrieved by the award passed by the Motor Accidents Claims Tribunal dismissing the claim petition on

the above grounds.

5. We heard Sri. M.S. Unnikrishnan, learned counsel appearing for the appellant and Smt. Deepa George, learned counsel appearing for the second respondent insurer. We have also gone through the pleadings and the materials on record. The impugned award discloses that the Motor Accidents Claims Tribunal has dismissed the claim petition on the following grounds:

a. The claim petition has been filed in an irresponsible manner and the averments are contradictory.

b. The owner and driver of the motor bike involved in the accident have not been impleaded.

c. The averments in the claim petition and the evidence are contradictory to each other.

6. The Motor Accidents Claims Tribunal has in paragraph 7 of the impugned award stated that the first respondent is impleaded in his capacity as the owner of a stage carriage bus, but in column 28 of the claim petition it is stated that the claimant was a pedestrian and was hit by a motor bike bearing registration No.KL-7-AV-2483. Yet another reason pointed out is that though the second respondent is the insurer of the motor bike, the averment in the claim petition is to the effect that the accident occurred due to the negligence of the second

respondent. The Tribunal has also held that the second respondent is the insurer of the motor bike and that the driver of the bus is not seen impleaded. The Tribunal has also held that though in Ext.A2 charge sheet, the name of the accused is shown as Deepar Joy, he has not been impleaded. On the other hand, the claimant has impleaded the owner of a bus who has no connection with the accident. Relying on Ext.A2 charge sheet, the Tribunal held that the evidence in the case is contrary to the pleadings.

7. Though we agree with the Tribunal that the lawyer appearing for the claimant has not paid attention to details and has been callously negligent in the preparation of the claim petition, the claimant should not have been made to suffer on account of that. The Tribunal has in the impugned award stated that the second respondent has been described as the driver of the vehicle. As a matter of fact, the second respondent is the insurer. Such a finding has been entered after reading the averments in paragraph 1 of column 28. In paragraph 2 of column 28, the claimant has averred that the first respondent is the driver and owner, and the second respondent is the insurer. The statement in paragraph 1 of column 28 of the application that the accident occurred due to the negligence of the second respondent the driver of the vehicle, is evidently an erroneous

statement, and it should not have been held out against the claimant. It is evident from the averments in the claim petition that the person impleaded as the first respondent is the owner and driver of a motor bike and not the owner and driver of a stage carriage bus.

8. The First Information Statement given by the claimant on 21.05.2008, while he was undergoing treatment as an in-patient in Medical Trust Hospital to the Assitant Sub Inspector of Police, Kochi City Traffic Police Station discloses that the information given by him to the police was to the effect that he was hit by a motor bike. He had also given the number of the motor bike as KL-7-AV-2483. Though in Ext.A2 charge sheet the name of the accused is shown as Deepar Joy, aged 20 years, S/o Joy, Kolarikkal (H), the charge sheet itself discloses that the owner of the motor bike is Anoop Joy, S/o Joy, residing at 2/83, Kolarikkal (H), South Chittoor P.O., Ernakulam-27, that the motor bike was covered by a valid policy of insurance which was valid till 22.05.2008, that the accused possessed driving licence No.43/742/2007 dated 27.02.2007 and that it is valid till 25.02.2027. It is evident from Ext.A2 charge sheet that the motor vehicle involved in the accident is a bike and that the owner thereof on the relevant date was Anoop Joy. The mere fact that in the charge sheet the accused is named as Deepar Joy who is residing in the same address

as Anoop Joy does not therefore lead to the conclusion that the owner of the motor bike has not been joined as a party to the claim petition. At best, all that could be said is that the person who was driving the motor bike might have been someone other than the owner thereof and that it was Deepar Joy assuming such a person exists. It is also not known whether Deepar Joy is the alias of Anoop Joy.

9. In any case we are of the opinion that the Motor Accidents Claims Tribunal ought to have afforded an opportunity to the claimant to explain the disparity, if any in the name of the person who was driving the motor bike. Even assuming that Anoop Joy was not the person who was driving the motor bike, but Deepar Joy was driving the motor bike, the defect could have been cured by impleading the driver of the motor bike as party to the claim petition. The reasons given by the Tribunal for dismissing the claim petition in our opinion are too hyper technical and cannot be sustained. We are therefore of the considered opinion that the impugned award should be set aside and the claim petition remanded to the Tribunal for fresh trial and disposal, after affording the claimant an opportunity to suitably amend the pleadings if such amendment is required and also to implead the driver of the motor bike, if as a matter of fact it was driven by someone other than its owner viz; Anoop Joy .

10. A reading of the claim petition as a whole discloses that the claimant has impleaded Anoop Joy in his capacity as the owner of the motor bike. It is evident from the averments in the claim petition, more particularly the averments in columns 15 and 28 thereof that the motor vehicle involved in the accident is the motor bike bearing registration No.KL-7-AV-2483. The claimant has no case that he was hit by a bus. His case is that he was hit by a motor bike. The claimant has in column 28 of the claim petition averred that he was hit by a motor bike. The description of the first respondent in the cause title of the claim petition, as the owner of the bus bearing registration No.KL-07 J-3420 is evidently an erroneous statement. Such being the situation, we are of the opinion that the Tribunal ought not have dismissed the claim petition on the ground that the owner of the motor bike and its driver have not been impleaded. In any view of the case, the Tribunal ought to have afforded an opportunity to the claimant to have the cause title suitably amended by bringing the error to the notice of the learned counsel appearing for the claimant.

For the reasons stated above, we allow the appeal, set aside the award passed by the Motor Accidents Claims Tribunal, Ernakulam on 6.8.2012 in O.P.(MV) No. 579 of 2010 and remand the claim petition to the Motor Accidents Claims Tribunal for fresh trial and disposal. The

Motor Accidents Claims Tribunal shall dispose of the claim petition afresh in the light of the observations above, expeditiously and in any event within an outer limit of six months from today. The appellant and second respondent shall appear before the Motor Accidents Claims Tribunal through counsel on 22.06.2015. The Motor Accidents Claims Tribunal shall on that day issue notice to the first respondent and after service of notice on the first respondent, fix a date for trial of the claim petition afresh. The contentions of both sides on the merits are kept open.

**P.N.RAVINDRAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

kp/-