

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. 2133 of 2012 ()

IN OPMV 1535/2005 of M.A.C.T., ATTINGAL DATED 30-06-2012

APPELLANT(S):

**MOHANAN NAIR, AGED 46 YEARS
S/O GOPALA PILLAI, SVS BHAVAN
MATHA VEEDU, NANNATTUKAVU
POTHENCODE P.O**

BY ADV. SRI.R.T.PRADEEP

RESPONDENT(S):

- 1. NITHIN JOHN MATHEW
S/O.JOHN E.MATHEW
KOTTAKKAKATH HOUSE, KAYAMKULAM**
- 2. THE DIVISIONAL MANAGER
NATIONAL INSURANCE CO.LTD
ST.JOSEPH'S PRESS BUILDING
VAZHUTHACAUD
THIRUVANANTHAPURAM**

**R2 BY ADV. SRI.MATHEWS JACOB (SR.)
R2 BY ADV. SRI.P.JACOB MATHEW
R BY SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 18-08-2015, ALONG WITH MACA NO.2279/2012 THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

VS

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

M.A.C.A.Nos.2133 & 2279 of 2012

Dated this the 19th 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.1535/2005 and O.P.(MV).No.1536/2005 respectively. Since both the cases arose out of the same accident, we heard the counsel for the parties together and we dispose of the appeals accordingly.

2. The appellant in M.A.C.A.No.2133/2012 is the driver of an autorikshaw bearing Reg.No.KL-01 C-5841. The accident occurred on 18.09.2005 at about 10.10 pm by a collision between the autorikshaw driven by the appellant and another motor cycle having Reg.No.KL-1-C 8999.

3. The appellant in M.A.C.A.No.2279/2012 is the pillion rider of the said motor cycle.

4. The claimants have marked in evidence Exts.A1 to A9 before the Tribunal.

5. The Tribunal by a common award rejected both the applications.

6. The learned counsel for the appellants Sri.R.T.Pradeep submitted that the views taken by the Tribunal on the points framed, cannot be supported. The learned Senior counsel for the insurance company Sri.Mathews Jacob submitted that the award passed is perfectly justified.

7. What we find from reading paragraph 9 of the award is that in spite of the Police Charge Ext.A3, where the rider of the motor cycle was the accused, having committed offences punishable under Sections 279, 337 and 338 of the Indian Penal Code, the Tribunal was of the view that he has not been made a party to the proceedings and the registered owner and the insurer of the autorikshaw are also not seen as parties. The insurance company has got a contention that the rider of

the motor cycle had no effective or valid driving licence. This contention was also noted by the Tribunal to find that while an accident has taken place, involving two vehicles, it is appropriate and legally proper that the rider or driver, registered owner and insurer of both the vehicles have to be made parties to the proceedings. In spite of the production of police charge, the Tribunal was of the view that the claimants have colluded with police and suppressed various aspects.

8. It is seen from the proceedings before the Tribunal that the respondents have not sought for an opportunity or did not summon the police officer to challenge any details contained in the charge sheet, scene mahazar or in the F.I.R.

9. Going by the decision of the Division Bench of this Court in **New India Assurance Co. Ltd v. Pazhaniammal** reported in 2011 (3) KLT 648, charge sheet in a criminal case is prima facie sufficient evidence to prove the negligence. It is the party which wants to

challenge the same to adduce independent evidence and then the Tribunal will have to consider various aspects. Since the same is absent in this case, we cannot justify the conclusions arrived at by the Tribunal. Further the view taken by the Tribunal that the rider of the motor cycle, the owner and the insurer of the autorikshaw are necessary parties also cannot supported.

10. We are of the view that in the light of the decision of this Court in **Anuradha Varma v. State of Kerala** reported in 1993 (2) KLT 777 and **Oriental Insurance Co.Ltd v. Sobhana Omanakuttan** reported in ILR 2015 (3) KER 103, the driver is not a necessary party in an application under the motor vehicles act claiming compensation, the claimants can array any of the tort-feasors and seek reliefs. This is so in the light of the provisions of the Kerala Torts (Miscellaneous Provisions) Act. All these have been examined by this Court in the above two judgments. If at all any party wants the driver who has not been impleaded in the proceedings to be

examined, the said party will have to file appropriate application before the Tribunal and it is up to the Tribunal to take a decision in the matter. The same is the law laid down by this Court.

11. Therefore the finding in point No.1 cannot be supported and we vacate the same.

12. As far as the amount of compensation is concerned, the Tribunal did not believe the entries in the treatment records produced by the claimants. We find from the records maintained by the medical college and it cannot be said that the claimants would have colluded with the Doctors to create these documents. The impression recorded by the Tribunal therefore cannot be supported in that regard also. We are not discussing any one of the documents to fix the quantum, since the matter will have to be remanded back and the Tribunal will have to consider all the matters afresh.

Accordingly the appeals are allowed. The award is set aside and the cases are remanded back for

consideration to the Tribunal for fresh disposal in accordance with law and we direct the Tribunal to pass appropriate award after adverting to all items of evidence in the matter within a period of 6 months from the date of receipt of a certified copy of this judgment. Parties will suffer their costs in the appeals.

Sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE

Sd/-
K.P.JYOTHINDRANATH,
JUDGE

VS

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PA TO JUDGE