

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. 2172 of 2012 ()  
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AGAINST THE AWARD IN OPMV 1718/2005 of M.A.C.T.,ATTINGAL

APPELLANT/APPLICANT :  
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PRASAD A, AGED 34 YEARS  
S/O. AMARSHAN, KUNNUVILA VEEDU, CHATHAMPARA  
THOTTAKKADU P.O., THIRUVANANTHAPURAM.

BY ADVS.SRI.R.T.PRADEEP  
SRI.P.BIJIMON

RESPONDENTS/RESPONDENTS :  
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1. KRISHNAKUMAR  
VAISAKAM, NANDAVANAM, NEDUMPARAMBU  
NAGARoor, THIRUVANANTHAPURAM. 695 618

2. THE MANAGER  
UNITED INDIA INSURANCE CO. LTD., ASH-HAR COMPLEX  
PALACE ROAD, ATTINGAL.PIN 695 618

R2 BY ADV. SRI.A.R.GEORGE  
R BY SRI.JOHN JOSEPH VETTIKAD

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.**

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**M.A.C.A.No.2172 OF 2012**  
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Dated this the 12<sup>th</sup> day of August, 2015

**JUDGMENT**

Ramachandran Nair, J.

In this appeal filed by the claimant, the substantial contentions raised are to the effect that the Tribunal's view that motor accident has not occurred is not correct and the further view taken that the appellant would have sustained injury in some other accident is also not correct.

2. We heard the learned counsel on both sides.

3. The learned counsel for the appellant submits that going by the records produced by the appellant, it can be seen that the Police had registered a crime and Ext.A4 is the charge sheet. In the light of the decision of this Court in New India Assurance Co. Ltd. v. Pazhaniammal (2011 (3) KLT 648), the same will be sufficient proof of negligence and it is for parties contesting it to adduce independent evidence. It is also submitted that the injuries sustained by the

appellant are serious. The learned counsel further submits that the Tribunal has found fault with for not impleading the rider of the scooter. But going by the decisions of this Court, the driver is not a necessary party at all.

4. The learned counsel for the Insurance Company while supporting the award of the Tribunal submitted that the driver should have been impleaded in the proceedings. The registered owner and insurer of the scooter were impleaded and a total compensation of Rs.5 lakhs was claimed. The accident occurred on 16.09.2005 at Alamcode junction.

5. The finding on point No.1 has gone adverse to the appellant. The Tribunal in paragraph 6 observed that the petitioner-claimant is seen to have sustained grievous injuries in the accident and Attingal Police are seen to have registered Crime No.1076/2005 alleging offences under Sections 279, 337 and 338 IPC.

6. The Tribunal's view was that the probative value of Exts.A1 to A4 has been contradicted. The learned counsel for the appellant

submits that the said view cannot be sustained at all. It is submitted that the treatment records along with Police records will show that the accident had occurred and the appellant has sustained injuries and those documents cannot be discarded evidently. What is argued by the learned counsel for the Insurance Company is that this Court may direct the rider of the scooter to be impleaded in the proceedings.

7. After going through the discussion made by the Tribunal and in the light of the records produced before the Tribunal, we are of the view that the findings that there is no evidence of the accident cannot be sustained. The matter will have to be considered afresh by the Tribunal and the evidence will have to be properly appreciated. Conclusion arrived at as of now cannot be supported at all. The view that the appellant would have sustained injury in a different accident also cannot be supported at all.

The impugned award is set aside and the matter is remanded to the Tribunal for consideration afresh. It is upto both sides to invite the attention of the Tribunal to various matters. The learned counsel for

the appellant requested that the appellant may be granted an opportunity to examine himself before the Tribunal. We permit the same. It is upto the respondents also to adduce evidence or raise whatever contention they want to rely upon. The learned counsel for the Insurance Company pleaded for an opportunity to file a petition before the Tribunal to implead the rider of the scooter as a party. It is upto the Tribunal to take appropriate decision in the matter after hearing the parties. The Tribunal will dispose of the matter as expeditiously as possible.

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

**K.P.JYOTHINDRANATH, JUDGE**

SV.