

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. 145 of 2013 ()

AGAINST THE AWARD IN OPMV 473/2005 of M.A.C.T.,ATTINGAL DATED
30-06-2012

APPELLANT/APPLICANT:

KIRAN @ KIRAN MOHAN, AGED 22 YEARS
S/O.MOHANAN NAIR, PADMAVILASAM, VETTAMPALLY
IRINJAYAM P.O, NEDUMANGADU.

BY ADV. SRI.R.T.PRADEEP

RESPONDENTS/RESPONDENTS

1. SUPRABHA
HOUSE NO.8/509, VAZHAPPARA, NANNIYODE
NEDUMANGADU, THIRUVANANTHAPURAM 695 541.

2. THE MANAGER
THE NATIONAL INSURANCE CO.LTD, P.B NO.60
SOUNDARYA BUILDING, M.G ROAD, PULIMOODU
THIRUVANANTHAPURAM 695 001.

R1 BY ADV. SRI.J.JAYAKUMAR

R2 BY ADV. SMT.P.A.REZIYA

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.145 of 2013

Dated this the 12th day of August, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the claimant in O.P(MV)No.473/2005 on the file of the Motor Accidents Claims Tribunal, Attingal. The Tribunal dismissed the claim petition. The facts are as follows :

2. One Kiran Mohan aged 16 years sustained injuries in a road traffic accident. The vehicle involved is an Ambassador car bearing Reg.No.KL-1/M/7731. The minor claimant was riding his bicycle. He was treated in the hospital and through his father he made the claim before the Tribunal, which was dismissed by the Tribunal. Hence the appeal.

3. When the appeal came up for hearing, the learned counsel for the appellant submitted before us that the copy of the FIR, scene mahazar and charge sheet were filed before the Tribunal. The Tribunal by unnecessarily making comments upon the Police and investigation,

came to the conclusion that the case put forward is not reliable. It is the further case that the minor claimant sustained even permanent disability to the extent of 6%. It is a case where the appellant sustained fracture of proximal phalanx of 4th and 5th toes of his right foot and fracture of both malleoli of right ankle. There was also injury to the face.

4. The learned counsel for the appellant also submitted before us that here is a case where the Police filed charge after a thorough and detailed investigation. This Court has held in **New India Assurance Co. Ltd. v. Pazhaniammal (2011 (3) KLT 648)** that the charge is a prima facie evidence regarding negligence of the person against whom charge is filed. It is the submission that when there is a charge, the Tribunal went wrong in coming to a conclusion against the claimant.

5. We also heard the learned counsel for the Insurance Company, who submitted before us that the driver is not made a party in this case. The Tribunal rightly analysed the facts and came to the conclusion that there was no valid permit for the offending vehicle.

6. After hearing the submissions and also after going through

the award, we are of the view that this is a matter where an interference is warranted. Therefore, the whole findings made by the Tribunal are hereby set aside and the matter is remanded back for fresh determination by the Tribunal. It is also upto the parties to make submissions before the Tribunal in respect of impleading the driver of the vehicle as a party to the proceeding.

Thus, the appeal is allowed in the above terms and the matter is remanded to the Tribunal for fresh disposal. The parties shall bear their costs in the appeal. On receipt of the certified copy of the award, the Tribunal shall expedite the proceedings as the accident occurred as back in 2005.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.