

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

MACA.No. 181 of 2013 ()

AGAINST THE AWARD IN OPMV 710/2006 of MACT MUVATTUPUZHA DATED 24-05-2012

APPELLANT(S) :

THE NATIONAL INSURANCE COMPANY LTD
1st FLOOR, MUNICIPAL SHOPPING COMPLEX,
MAIN ROAD, NORTH PARAVOOR, ERNAKULAM DISTRICT
REPRESENTED BY ITS DEPUTY MANAGER

BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA

RESPONDENTS:

1. VIJAYAMMA, S/O BABU, POTTANANICKAL HOUSE,
MULLARINGAD, NOW RESIDING AT CHATHAMATTOM P.O.,
KADAVOOR VILLAGE, KOTHAMANGALAM TALUK,
PIN 686671
2. RAJAN, S/O KUNJIRAMAN, MAMPILLIPURATHU HOUSE,
KARUMALLOOR KARA AND VILLAGE,
KARUMALLOR P.O., PARAVOOR TALUK,
ERNAKULAM DISTRICT, PIN 683511
3. SHEEJA, W/O RAJAN, MAMPILLIPURATHU HOUSE,
KARUMALLOOR KARA AND VILLAGE,
KARUMALLOOR P.O., PARAVOOR TALUK
ERNAKULAM DISTRICT, PIN 683511

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 27-11-2015 ALONG WITH MACA NO. 517 OF 2013, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

ANIL K. NARENDRA, JJ.

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M.A.C.A. Nos. 181 and 517

of 2013

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Dated, this the 27th day of November, 2015

JUDGMENT

Ramachandra Menon, J.

Fixation of the negligence and apportionment of liability with reference to the quantum of compensation awarded are under challenge in both these appeals.

2. The appellant was the insurer of the car bearing No. KL 7D 9669 involved in both the cases. The accident was on 03.05.2006. There occurred a collision between the aforesaid car and a motorcycle bearing No. KL 6D 2864 owned and ridden by the first respondent in MACA No. 517 of 2013, on which the first respondent in MACA 181 of 2013 (wife of the first respondent in other case) was travelling as a pillion rider, causing serious injuries to both of them, which was sought to be compensated by filing separate claim petitions numbered as O.P.(MV) Nos. 710 and 716 of 2006.

3. The driver of the car did not choose to contest the matter and he was set ex-parte. The evidence adduced from the part of

the claimants consists of Exts. A1 to A13 documents and oral deposition of PW1 doctor. After considering the facts and circumstances, the negligence was fixed solely upon the driver of the car. In respect of O.P. (MV) No. 710 of 2006, a total compensation of Rs.1,32,300/- was awarded, whereas in respect of O.P.(M.V.) No. 716 of 2006, a total compensation of Rs.26,700/- was awarded. The amounts were directed to be satisfied with interest @ 8% p.a. from the date of filing the petition.

4. Heard the learned counsel for the appellant insurance company and the learned counsel appearing for the claimants in both the cases.

5. The learned counsel for the Insurance Company submits that the contention raised by the company is that the accident was only because of the negligence on the part of the rider of the motorcycle. With reference to the materials on record, the learned counsel for the appellant submits that the motorcycle was on the wrong side. It is stated that the road was lying north to south and the place of occurrence is at 1.04m. west from the eastern tarred end of the road, which is having a total width of 9 m. It was stated that the car was proceeding from north to south and the motorcycle

was coming from the opposite direction. This by itself reveals that the motorcycle was completely on the wrong side, more so, when the road was having a clear view of 300m. towards south and 200m towards north. But the Tribunal fixed the negligence solely on the part of driver of the car and observed that if sufficient caution and care were taken by the driver and had applied the brake on time, the accident could have been avoided, which is contrary to the actual facts and circumstances, submits the learned counsel for the appellant.

6. On going through the materials on record, it is seen that the motorcycle was turning to right to enter into an old road at Vengalloor junction, after giving the proper indication and it was at that point of time that the car came and collided with the motorcycle. However, observing that the motorcycle was being ridden by the claimant in O.P.(M.V.) No. 716 of 2006 without any valid licence, 7.5% of the compensation was ordered to be deducted and the balance was directed to be compensated by the Insurance Company. This is sought to be interfered at the instance of the insurer, seeking to fix negligence solely upon the rider of the vehicle or atleast to apportion the same.

7. Learned counsel for the claimants submits that the spot of accident was a portion of the road, which virtually proceeds in a parallel manner, without any separation from the main road, on way from Thodupuzha to Kumaramangalam. It was after giving proper signal, that the motorcycle took a turn as above. It was also brought to the notice of this Court, with reference to the scene mahazar, that there were tyre marks of the car, to an extent of 10mtrs. on the road. This shows that the car was on a tremendous speed and hence despite applying the brake, it took further 10mtrs. to stop. In so far as the road was lying straight, with clear distant vision and the motorcycle had almost entered the other end of the road, to proceed to the destination, no negligence could have been attributed on the rider of the motorcycle. As such, the fixation of negligence on the part of the driver of the car by the Tribunal does not warrant any interference.

8. It is contended that the rider of the motorcycle was having no licence. But here, the point to be considered is whether the accident resulted was merely for the reason that the rider of the motorcycle did not have valid licence. It is true that driving of a vehicle without valid and effective licence could have contributed

*M.A.C.A. Nos. 181 and 517
of 2013*

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to the accident in some cases. But no such evidence was adduced by the Insurance Company. On the other hand, the facts and circumstances, reveals the position to the contrary. This Court finds that the finding and the reasoning given by the Tribunal do not require any interference. This is more so, in the case of MACA No. 181 of 2013, where the claimant was travelling as a pillion rider and it happens to be a case of 'composite negligence'.

In the above circumstances, interference is declined and both the appeals are dismissed.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**ANIL K. NARENDRAN,
JUDGE**

kmd

/True copy/

P.A. to Judge