

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

MACA.No. 386 of 2015 ()

AGAINST THE AWARD IN OPMV 2224/2009 of ADDL. MACT, ERNAKULAM
DATED 19-11-2014

APPELLANT:

RAJEEV K.G. AGED 33 YEARS
S/O. GOPALAKRISHNAN NAIR, KARANIYIL HOUSE
PAMPADY KARA, KOTHALA P.O., KOOROPPADA VILLAGE
KOTTAYAM DISTRICT.

BY ADVS. SRI. MATHEWS K. PHILIP
SMT. T. MANASY
SRI. BINDU P. NAIR

RESPONDENTS:

1. ANEESH .S
S/O. SATHYASSELAN, KIZHAKKE THOPPIL HOUSE
MANAPPURAM P.O., NEAR GOURI NATHA TEMPLE
THAIKATTUSSERY VILLAGE, ALAPPUZHA DISTRICT- 688 564.

2. MANAGING DIRECTOR
KSRTC, THIRUVANANTHAPURAM-695 001.

R2 BY SMT. BIMALA BABY, SC, KSRTC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.386 OF 2015

DATED THIS THE 16th DAY OF NOVEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Dismissal of the claim petition preferred by the appellant seeking compensation in respect of serious injuries sustained involving fracture to clavicle and such other injuries because of the collision between a KSRTC bus and car driven by the appellant is the subject matter of challenge in this appeal.

2. The case of the appellant is that he was driving his maruthi car bearing No.KL-5Y 7269 on 20.9.2009 and when it reached the place of occurrence a KSRTC bus bearing No.KL-15/2551 (TN 523) driven by the 1st respondent and belonging to the 2nd respondent came from the opposite direction and hit against the car causing serious injuries involving hospitalisation in the Lakeshore Hospital, Kundannur till 25.9.2009 followed by such other consequences. The police filed a charge sheet against the 1st respondent under Sections 279 and 338 of the Indian Penal Code. The loss was sought to be compensated by filing claim petition

before the Tribunal. A joint written statement was filed on the part of respondents 1 and 2 stating that the accident was not in the manner as alleged by the claimant and that the same was only because of careless act on the part of the claimant himself. Such other general grounds were raised on the negligence and quantum.

3. Evidence was adduced before the Tribunal from the part of the claimants by examining himself as PW1 and also examining PW2, besides producing documents A1 to A14. Observing that the claimant had no case that the KSRTC bus driven by the 1st respondent hit on the car and that hitting by a running KSRTC bus on the body of a person who was driving the car in the opposite direction without anything on the side of the car was practically improbable or impossible that the Tribunal dismissed the claim petition as devoid of any merit, which is sought to be intercepted with by filing the present appeal.

4. Heard the learned counsel for the appellant as well as the learned Standing Counsel appearing for the 2nd respondent.

5. The learned counsel for the appellant points out that the

observations made by the Tribunal as against the case put forward by the appellant/claimant and inference drawn are per se wrong and unsustainable in all respects. It is stated that the police had conducted a detailed investigation and a charge sheet was filed against the 1st respondent as mentioned already in respect of the concerned offences. The car driven by the appellant was completely damaged on the front side and that factual position is noted in the police records. Reliance is also sought to be placed on the report submitted by the AMVI as per Ext.A9. Copies of the above proceedings were placed for consideration before this Court. On going through the charge sheet, other police records and also the report of the AMVI, it is seen that it was a case of head on collision and that the front side of the car was completely damaged. The AMVI after noting that the front portion of the vehicle was completely damaged had also attached the list as an enclosure. It appears that these documents have been simply given a go by by the Tribunal and it was proceeded on the misconceived notion that there was no hit against the vehicle and that some unbelievable story was being put forth by

the claimant suggesting hit by the KSRTC bus directly on the body causing serious injuries involving the fracture. Obviously, the documents were produced and marked in evidence. It might be true that in the claim petition filed by the claimant, it could not have been separately or specifically stated that the KSRTC bus hit against the car thereby causing injuries to him and no such specific assertion might have been made by the claimant as well when examined as PW1. But the pleadings and evidence on record has to be read in the light of the other materials on record and evidence have to be weighed and not to be counted in view of the settled principles of law. Even a cursory glance of the documents produced particularly, A1 FIR/A2 charge sheet and A9 report submitted by the AMVI would clearly reveal that there was a hit between the KSRTC bus and the car causing serious damage to the car resulting in serious injuries involving fracture to the bones of the appellant who was driving the car. It is seen that no minimum effort has been made by the Tribunal to verify these facts and figures before deprecating the course and conduct of the claimant. We cannot but deprecate the casual conduct,

approach and attitude displayed by the Tribunal in considering and finalising the claim preferred by the injured. We find that the award passed by the Tribunal cannot sustain even for a minute and we set aside the same accordingly. The matter is remanded for fresh consideration and to pass a 'just' award on the basis of the actual facts, figures and evidence. The proceedings as above shall be finalised at the earliest, at any rate within three months from the date of receipt of a copy of this judgment. The appeal stands allowed.

The parties shall appear before the Tribunal on 01.12.2015.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

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