

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. 326 of 2013 ()

**AGAINST THE AWARD IN OP(MV) 202/2006 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
ATTINGAL DATED 27-08-2012**

APPELLANT/APPLICANT:

**SHOUKKATHALI, AGED 58 YEARS
S/O.ABDUL KHADER, SN PURATHUKUNCHANVILA VEEDU
PANAVOOR P.O., NEDUMANGADU.**

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

RESPONDENTS/RESPONDENTS:

- 1. HANEEFA ANSARUDEEN
ANSAR MANZIL, KOONANVENGA, PANAVOOR
NEDUMANGADU-695 541.**
- 2. THE MANAGER
NEW INDIA ASSURANCE CO.LTD., 2ND FLOOR, RAMA PLAZA
S.S.KOVIL ROAD, THAMPANOR, THIRUVANANTHAPURAM-695 001.**

R2 BY ADV. SRI.A.A.ZIYAD RAHMAN

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.326 of 2013

Dated this the 18th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

The appeal is against the award in O.P.(M.V.)202/2006 on the file of the Motor Accidents Claims Tribunal, Attingal. The accident in this case occurred at 2. p.m. on 12.11.2005. It was alleged that the appellant was riding on the pillion of motorcycle bearing registration No.KL-16/A-954 driven by one Anvarkhan. The motorcycle capsized causing him to be thrown off and resultantly he sustained injuries which led to the filing of the application.

2. Before the Tribunal Exts.A1 to A7 documents have been marked by the claimant and Ext.B1 by the Insurance Company.

3. The Tribunal, verified the wound certificate Ext.A4 and noted the injuries therein. It is stated that even though a final charge sheet has been made which it is clear from Ext.A3, merely because of the entry in the wound

certificate that the claimant sustained injuries due to hit by another scooter the Tribunal disbelieved the case of the applicant. The learned counsel for the appellant submitted that in the light of the judgment of this court in **New India Assurance Co. Ltd. v. Pazhaniammal [2011 (3) KLT 648]** a charge sheet filed by the police is prima facie sufficient evidence to prove negligence. It is also submitted that in the light of the decision of this Court in **Oriental Insurance Co. Ltd v. Sobhana Omanakuttan [ILR 2015 (3) Ker.103]** the driver of the offending vehicle is not a necessary party.

4. We find much force in the above submission. The driver of the offending vehicle is not a necessary party at all. A claimant can file an application for compensation against any tortfeasor. The Tribunal, after feeling suspicion on all these aspects fully ignored the medical records. According to us, the approach made by the Tribunal is totally erroneous. The Tribunal had to assess the evidence. It is also seen that after marking the documents

and without insisting even for the appearance of the claimant also the Tribunal has entered these findings. Therefore, the matter requires reconsideration. In that view of the matter, we vacate all the findings and send back the case for fresh consideration.

5. The parties will appear on 15.10.2015 before the Tribunal and all efforts will be taken to dispose of the matter finally within a period of six months thereafter. It is open for the parties, if they choose, to adduce evidence oral and documentary.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/