

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

MACA.No. 406 of 2013 ()

AGAINST THE AWARD IN OPMV 1087/2002 of MACT,THRISSUR  
DATED 18-12-2008

APPELLANT(S)/RESPONDENTS 1 & 3:

1. ADDITIONAL DIRECTOR GENERAL OF PRISONS,  
KERALA STATE, THIRUVANANTHAPURAM.

2. STATE OF KERALA,  
REPRESENTED BY DISTRICT COLLECTOR, THRISSUR-3.

BY GOVERNMENT PLEADER SMT.P.A.RAZIYA

RESPONDENT(S)/PETITIONER :

1. MURALEEDHARAN,  
S/O.KUMARAN NAIR, ATTOOR HOUSE, CHOOLISSERY.P.O  
CHOOLISSERY VILLAGE DESOM, THRISSUR DISTRICT  
PIN-680541.

2. SHAJI K.R,  
S/O.RAMAN, KAMBILY HOUSE, CHEMBUTHARA  
PANANCHERY VILLAGE, THRISSUR DISTRICT,  
PIN-680003.

R2 BY ADV. SRI.P.K.RAVISANKAR  
R1 BY ADV. SRI.NAGARAJ NARAYANAN  
R1 BY ADV. SRI.SAIJO HASSAN  
R1 BY ADV. SRI.BENOJ C AUGUSTIN  
R1 BY ADV. SRI.SEBIN THOMAS  
R1 BY ADV. SMT.J.KASTHURI  
R1 BY ADV. SRI.PRATHAP PILLAI  
R1 BY ADV. SRI.P.E.SAJAL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 27-01-2015, ALONG WITH ZMACA. 1087/2013, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.**

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**M.A.C.A No.406 of 2013 and  
Unnumbered M.A.C.A of 2013**  
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**Dated this the 27<sup>th</sup> day of January, 2015**

**JUDGMENT**

Ramachandran Nair, J.

These appeals are filed against the award in O.P.(M.V) 1087 of 2002 of Motor Accident Claims Tribunal, Thrissur. In M.A.C.A No.406 of 2013, the appellants are respectively the Additional Director General of Prisons, Kerala State and the State of Kerala represented by the District Collector, Thrissur. The 2<sup>nd</sup> respondent in M.A.C.A No.406 of 2013 has filed the connected appeal, which has not been numbered since the appellant has not made deposit under Section 173(1) of the Motor Vehicles Act.

2. We have treated M.A.C.A No.406 of 2013 as the main case since the disposal of the same will have bearing on the other appeal also.

3. We heard the learned Government Pleader, the learned counsel for the claimant as well as the learned counsel for the 2<sup>nd</sup> respondent.

4. The accident in this case happened on 27.03.2002 at

about 4.45 p.m while the claimant was riding a motorcycle bearing Reg.No.KL01/F 2378 through Civil Line - Ayyanthole ground public road. When it reached near Maveli Store, the offending vehicle, another motor cycle bearing Reg.No.KL8/K 862 driven by the 2<sup>nd</sup> respondent in M.A.C.A No.406/2013 which was coming behind, hit the claimant's vehicle. The injured was taken to the West Fort Hospital, Thrissur and was treated as an inpatient.

5. The learned Government Pleader submitted that the finding by the Tribunal on the aspect of negligence is not correct. The road at the spot lies north-south. This is a case where the claimant was trying to swerve the motorcycle towards right side (eastern side) for reaching another road where a Gas Agency is functioning. Therefore it is submitted that there was negligence on the part of the claimant itself. The learned counsel for the claimant submitted that there is no independent evidence for the said version. He was proceeding through the road which lies north-south through the western side. Apart from the same, it is also submitted that the road, which lies towards eastern side where the gas agency is situated, is some

what further north from the spot of the accident, that too after the bus stop.

6. We have gone through para.7 of the award of the Tribunal. The Tribunal has analysed the evidence of PW1. The learned Government Pleader invited our attention to the evidence of PW1 and the suggestion put in during the cross examination.

7. Going by the evidence of PW1, he was proceeding from south to north in the motorcycle, then the offending vehicle which was coming behind his motorcycle hit against his vehicle. He fell down and sustained injuries below the knee of his right leg.

8. In the cross examination, the suggestion given is that he was travelling actually as a pillion rider. The same has been denied by the claimant. In the cross examination on behalf of the 2<sup>nd</sup> respondent he admitted that he was going to have a gas cylinder from the agency which is situated on the eastern side of the road. He explained that the gas agency is located in a road going towards east after the bus stop, ie. further towards north. The road is having 4 to 5 meters width there and he was keeping

his side and the spot of the accident is 2 metres from the western far end.

9. Even though vehement arguments have been raised by the learned Government Pleader and the learned counsel for the 2<sup>nd</sup> respondent, especially in the light of the fact that the 2<sup>nd</sup> respondent herein was acquitted by the criminal court, the Tribunal has not chosen to accept the case of the appellant in regard to the negligence alleged against the claimant. It is true that the 2<sup>nd</sup> respondent was acquitted by the criminal court. But as far as the case before the Motor Accident Claims Tribunal is concerned, the Tribunal can take independent decision, on the basis of the evidence adduced.

10. There is no independent evidence to show that he was not driving the motorcycle and was travelling as a pillion rider or that he was trying to cross the road towards eastern side. The appellant failed to establish negligence on the part of the claimant. Therefore, we confirm the finding of the Tribunal regarding negligence.

11. As far as the amount of compensation is concerned, the total amount granted to the claimant is Rs.1,23,215/-. The

evidence shows that he was an employee of BSNL at Kunnankulam. The Tribunal has awarded Rs.10,165/- towards loss of earning, Rs.1,000/- towards expense for transportation, Rs.5,000/- towards extra nourishment and a sum of Rs.500/- towards damages to clothing and articles. Towards medical expenses Rs.29,430/- granted as against the claim of Rs.50,000/-. For pain and suffering Rs.15,000/- and for loss of amenities Rs.6,000/- have also been granted apart from the disability compensation of Rs.57,600/-. Before the Tribunal Ext.A7 disability certificate was relied upon by the claimant. Regarding the disability sustained by him, the Tribunal has relied upon the evidence of the doctor also.

12. We are of the view that having regard to various aspects including the injuries sustained, the disability compensation awarded is reasonable and therefore we confirm the same. In that view of the matter, M.A.C.A No.406 of 2013 is dismissed confirming the award passed by the Tribunal.

13. Unnumbered M.A.C.A is consequently dismissed.

The learned counsel for the 2<sup>nd</sup> respondent submitted that the 2<sup>nd</sup> respondent is facing revenue recovery proceedings

pursuant to the award passed by the Tribunal. According to the learned counsel, there cannot be any recovery by resorting to the revenue recovery proceedings in the absence of any competent proceedings issued against him, fixing any loss that was occasioned to the Government. According to the learned counsel, the 2<sup>nd</sup> respondent was acquitted from the criminal case also. The learned counsel relied upon the judgment of this Court in **Badarudeen v. K.S.R.T.C** [ILR 1999 (1) Ker. 1], wherein the case of a pensioner was considered. We are of the view that the authority concerned have to proceed in accordance with the relevant rules rather than proceeding under the Revenue Recovery Act straight away.

Sd/-

***T.R.RAMACHANDRAN NAIR***  
***Judge***

Sd/-

***P.VASHA***  
***Judge***

rtr/

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P.S to Judge