

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937**

**MACA.No. 88 of 2011 ( )**  
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**AGAINST THE AWARD IN OPMV 1897/2006 of MOTOR ACCIDENTS CLAIMS  
TRIBUNAL, ERNAKULAM**

**APPELLANT/PETITIONER:**  
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**GERALD NORONHA, AGED 59 YEARS,  
S/O. JOHN NORONHA, ARNOSH, H.NO.43/450  
AYYAPPANKAVU EAST, KOCHI 682 018.**

**BY ADV. SRI.K.V.RAJAN**

**RESPONDENTS:**  
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**1. JOBY THOMAS, S/O.K.G.GEORGE,  
KALATHIVEETIL HOUSE, BEACH ROAD, PUTHUVYPE PO  
ELAMKUNNAPUZHA, ERNAKULAM 682 002.**

**2. UNITED INDIA INSURANCE CO.LTD.,  
SHARANYA, HOSPITAL ROAD, KOCHI-682 011.**

**R2 BY ADV. SRI.P.SANKARANKUTTY NAIR  
R1 BY ADV. SRI.B.RAMACHANDRAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON  
03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**P.B.SURESH KUMAR, J.**

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**M.A.C.A.No.88 of 2011**

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**Dated this the 3<sup>rd</sup> day of August, 2015**

**JUDGMENT**

The claimant in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. The case of the claimant before the Tribunal in the claim petition was that he sustained injuries in the accident took place on 12.6.2006 involving a motor cycle owned and driven by the first respondent. The second respondent was the insurer of the vehicle. The first respondent remained ex parte. The second respondent contested the claim petition, contending among others, that they suspect collusion between the claimant and the first respondent in the matter of filing the claim petition. The Tribunal accepted the stand

of the insurer and dismissed the claim petition, holding that the claimant had not satisfactorily proved the accident and that the genuineness of the factum of the accident is doubtful. The claimant is aggrieved by the said decision of the Tribunal and hence this appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the respondents.

4. The case of the claimant in the claim petition before the Tribunal was that he was moving from east to west in his motor cycle at the time of the accident and the first respondent who came from north to south at a place called Market Road Junction hit against his vehicle. It is seen that the police registered a crime in connection with the accident. Ext.A1 is the First Information Report in the crime registered in connection with the accident. Ext.A3 is the charge sheet laid by the police after investigation in Ext.A1 crime. It is not disputed that Ext.A3 charge sheet has been laid alleging that the accident occurred on account of the

negligence of the first respondent. Though the insurer contended that they doubt the genuineness of the accident, they have not taken any steps to establish the said contention. The police officer who conducted the investigation in Ext.A1 crime and laid Ext.A3 charge sheet has not been examined. It seems that the Tribunal accepted the case of the insurer on the ground that there were no damages noticed by the Assistant Motor Vehicle Inspector to the motorcycles involved in the accident, after the accident. Merely for the reason that the Assistant Motor Vehicle Inspector did not notice any damage to the vehicles involved in the accident, it cannot be presumed that there was no accident. The materials made available by the claimant in the claim petition, mainly the First Information Report, the Scene Mahazar, the Final Report etc. would reveal beyond doubt that there was an accident as alleged. In the aforesaid circumstances, the impugned award is liable to be interfered with.

In the result, the appeal is allowed and OP(MV) No.1897 of 2006 is remitted to the Motor Accidents Claims Tribunal, Ernakulam for fresh disposal. In so far as the claim petition was filed as early as in the year 2006, I deem it appropriate to direct the Tribunal to decide the petition on merits, within a period of six months from today. The parties are directed to appear before the Tribunal on 10.9.2015.

**P.B.SURESH KUMAR, JUDGE.**

smm