

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

MACA.No. 190 of 2011 ()

**AGAINST THE AWARD IN OPMV 1800/2005 of ADDL. MOTOR ACCIDENT CLAIMS
TRIBUNAL, KOTTAYAM DATED 25-02-2010**

APPELLANT/PETITIONER:

**K.B.VENUGOPALAN NAIR ,
S/O.BALAKRISHNAN NAIR, KALAPPARAKUNNEL HOUSE
VELLOOR PO, KOTTAYAM.**

BY ADV. SRI.M.J.THOMAS

RESPONDENTS/RESPONDENTS:

- 1. SUNIL K MANOHARAN, S/O.C.K.MANOHRAN
KARAVATHOOR HOUSE, THRIPIUNITHURA, ERNAKULAM-682 301.**
- 2. THE NATIONAL INSURANCE COMPANY LTD
THRIPIUNITHURA BRANCH-682 301.**
- 3. MANAF P.K., S/O.KAYI, KELACHIRA HOUSE
VADEKARA, VETTIKKATTUMUKKU BHAGAM, VELLOOR
KOTTAYAM-686 501.**

R2 BY ADV. SRI.M.A.GEORGE

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

vpv

P.B.SURESH KUMAR, J.

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M.A.C.A.No.190 of 2011

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Dated this the 9th day of January, 2015

JUDGMENT

The claimant in an application for compensation before the Motor Accidents Claims Tribunal has come in this appeal, challenging the decision of the Tribunal in dismissing the application.

2. The case of the claimant is that on 29.12.2004, while he was travelling in the bus bearing registration No.KL-7/R-7779 from Ernakulam to Kottayam, he sustained dislocation of his right shoulder and a few other injuries on account of the sudden application of brake by the third respondent, the driver of the vehicle. A sum of Rs.41,000/- was claimed by him, in the circumstances, by way of compensation.

3. Respondents 1 and 3 did not contest the application. The second respondent, the insurer of the vehicle, contested the application on all grounds, after obtaining permission of the Tribunal under section 170 of the Motor Vehicles Act. The essence of the contention of the second respondent was that the accident occurred due to the negligence of the petitioner in not properly holding on the iron bars provided inside the bus for the passengers.

4. The Tribunal did not accept the case of the claimant that there was an accident as alleged by the claimant. On the other hand, the Tribunal found that if the claimant had sustained any injury, the same would have been due to his negligence. The said conclusion of the Tribunal as arrived at in paragraph 8 of the judgment reads thus:

"In such a case I have no hesitation to conclude that the 3rd respondent is not at all responsible to the alleged accident. Even if any sort of injury was sustained by the petitioner while he was travelling inside the bus, that should have been absolutely due to his own negligence to get him properly seated by holding to the iron bars provided for the passengers. Issue No.1 is answered accordingly."

5. As noticed above, the insurer which had obtained permission under section 170 of the Motor Vehicles Act to contest the claim petition on all grounds, did not dispute the accident. Their contention was only that the accident occurred due to the negligence of the claimant in not properly holding on the iron bars provided inside the bus for the passengers. Paragraph 8 of the written statement of the insurer reads thus:

"8. All the averments in column 28 of the petition regarding the accident, injury and treatment of the petitioner are denied. The accident happened solely due to the negligence of the petitioner in not properly holding on the pillars in the bus and provided for the passengers. At

the time of accident the bus bearing registration No.KL 7 R 7779 was driven by the 3rd respondent in a moderate speed observing all the traffic rules and there was no negligence on his part as alleged in the petition."

In view of the written statement filed by the insurer, the only question before the Tribunal was as to whether the accident occurred on account of the negligence of the third respondent.

6. As noticed above, the only contention raised by the insurer before the Tribunal was that the accident occurred on account of the negligence of the claimant in not properly holding on the iron bars provided inside the bus for the passengers. According to me, the said stand of the insurer alone is sufficient to hold that the accident occurred on account of a sudden application of brake by the driver of the vehicle. The question whether a sudden application of the brake was necessitated on account of any particular situation is a matter for the driver of the bus to establish. In the absence of any evidence on the part of the driver, the contention raised by the insurer alone is sufficient to infer rashness and negligence on the part of the third respondent in driving the vehicle at the time of accident. Further, it is not disputed that a crime has been registered in connection with the accident on a

private complaint filed by the claimant. Ext.A1 is the first information report and Ext.A5 is the final report in that case. In Ext.A5, the investigating officer, after investigation, came to the conclusion that the accident in which the claimant sustained injuries occurred on account of the negligence of the third respondent. There is nothing on record to indicate that the conclusions arrived at by the investigating officer in Ext.A5 is vitiated in any manner known to law. The contention raised by the insurer in the written statement as referred to above together with Ext.A5 final report in the case registered in connection with the accident establish prima facie that the accident was on account of the negligence of the third respondent. The Tribunal has not considered the matter in this perspective. According to me, in the light of the contentions raised by the insurer, the claimant should have adduced oral evidence in the matter. Unfortunately, despite the specific contention raised by the insurer in the written statement, the claimant has not chosen to adduce any evidence in support of his case that the accident occurred on account of the negligent driving of the third respondent. However, on an evaluation of the entire materials on record, I am of the view that the interest of justice demands that the claimant shall

be given an opportunity to establish his case of negligence on the part of the third respondent.

7. In the result, the impugned award is set aside and the matter is remitted to the Tribunal for fresh consideration of the issue as to the negligence. If the issue of negligence is decided in favour of the claimant, needless to say that the consequent issues shall also be decided by the Tribunal. Since the application for compensation is of the year 2005, I also feel it appropriate to direct the Tribunal to dispose of the application expeditiously, at any rate, within a period of three months from today. The parties shall appear before the Tribunal on 27.1.2015.

The appeal is disposed of as above.

**Sd/-
P.B.SURESH KUMAR
JUDGE**

vpv