

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

MACA.No. 598 of 2013 ()

(AGAINST THE AWARD IN OPMV 163/2007 of M.A.C.T., ERNAKULAM DATED
31-08-2011)

APPELLANT/CLAIMANT:

CIVI VARGHESE, D/O.VARGHESE, AGED 24 YEARS,
THOTTASSERY HOUSE, NADAKKAVU P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.SHERRY J. THOMAS

RESPONDENTS/RESPONDENTS:

1. SREEDHARAN NAIR M.R.,
S/O.RAGHAVAN NAIR, INDU VIHAR, 23/169
THEKKUMBHAGOMP.O., TRIPUNITHURA
ERNAKULAM DISTRICT PIN 682 031.

2. JINU @ ARUNKUMAR, S/O.CHANDRASEKHARAN, VELMPARAMBIL
HOUSE, KANDAMKADAVU BHAGAVATHY TEMPLE, KUREKAKADU P.O.
KUREEKKADU VILLAGE, ERNAKULAM DISTRICT PIN 682 305.

3. THE ORIENTAL INSURANCE COMPANY LTD, THIRD PARTY CELL,
METRO PALACE, R.S.ROAD, ERNAKULAM NORTH
KOCHIPIN 682 018.

4. UNITED INDIA INSURANCE COMPANY LTD, THIRD PARTY CELL,
VETTUKATTIL BUILDINGS, M.G.ROAD, ERNAKULAM
PIN - 682 011.

R1 BY ADV. SRI.K.N.CHANDRABABU
R1 BY ADV. SRI.K.DHANESH KUMAR
R2 BY ADV. SRI.NIDHI BALACHANDRAN
R3 BY ADV. SRI.R.AJITH KUMAR (128/84)
BY SRI.GEORGE CHERIAN (THIRUVALLA)
BY SRI.JOHN JOSEPH VETTIKAD
R4 BY ADV. SRI.B.PREMNATH (E)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.**

.....
M.A.C.A.No.598 OF 2013
.....

Dated this the 29th September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J .

Fixation of negligence to an extent of 25% on the rider of the two wheeler on which the appellant was travelling at the relevant time, inspite of the fact that negligence was solely attributed on the driver of the car, who took the vehicle in a reverse direction and hit the scooter as evident from the charge sheet/ final report submitted by the police, thereby reducing the extent of compensation by Rs.36894/- as against the total of Rs.147576/-, made the appellant to approach this Court by filing this appeal.

2. The appellant was travelling on a two wheeler bearing No.KL.7AW/3533 ridden by her husband on 09.12.2006 and was proceeding along the western side of the road from south to north. While so, the offending vehicle/car bearing

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No.KL..AP/8500 owned by the first respondent, driven by the second respondent and insured by the third respondent was suddenly taken to the road in a reverse direction, from a workshop situated on the western side of the road, leading to abrupt collision between the scooter and the car, causing injuries to the appellant, which was sought to be compensated by filing the claim petition.

3. The first and second respondents did not contest the matter and the claim was sought to be resisted by the Insurance Company raising general grounds. Policy was admitted. The only evidence adduced before the Tribunal consists of Exts. A1 to A9. The claim of the appellant was that she was having employment as a Pharmacist in the Medical Centre Hospital, Ernakulam and that the monthly income was Rs.3000/-. Though no document was produced to substantiate her employment or income, the Tribunal chose to reckon the said figure of Rs.3000/- per month as the monthly income and proceeded to work out the compensation. There was hospitalisation for nearly 14 days.

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Considering the loss of earning for three months, the Tribunal awarded Rs.9000/-. The amounts awarded by the Tribunal under the relevant heads are the following:

Head	Amount claimed	Amount awarded
Loss of earning	30000	9000
Miscellaneous expenses	12000	2500
Medical expenses	120000	98276
Bystander's expenses	6000	2800
Compensation for pain and sufferings	50000	25000
Compensation for loss of amenities and enjoyment in life	25000	10000
TOTAL		147576- 36894 = 110682

After fixing the total compensation payable as Rs.147576/-, 25% was reduced towards negligence on the part of the rider of the scooter (who was not impleaded in the party array) and only the balance sum of Rs.110682/- was ordered to be satisfied with interest.

4. Heard the learned Counsel for the appellant and the learned Counsel for the Insurance Company

5. Since the policy was admitted, this Court did not find it necessary to issue further notice to the first and second respondents; more so when the service to said respondents was already completed before the delay was condoned as per order dated 21.01.2015.

6. The only point for consideration is whether the Tribunal was justified in reducing the amount of compensation to an extent of 25% alleging negligence on the part of the rider of the scooter. It is to be noted that the claimant /appellant was travelling on the scooter as a pillion rider and no negligence could have been there on her side under any circumstance, It could, at best, be only an instance of 'composite negligence' and not an instance of 'contributory negligence'. The evidence on record, as discussed by the Tribunal reveals that the scooter was being ridden by the rider along the western side of the road proceeding from south to north and that the accident occurred at

a place at about 1.5 metres to the east from the western tarred end of the road, which is the correct side for the scooter. There is also no dispute to the fact that the car involved, driven by the second respondent was taken on reverse from the workshop situated on the western side, all of a sudden and the collision took place within no time. In the said circumstance, it was not all possible for a rider of the scooter, who was proceeding from south to north, to visualise or even to anticipate that a car would be taken on reverse from the workshop situated on the western side, which was not directly visible. That apart, the investigation conducted by the police reveals that, it was only because of the negligence on the part of the driver of the car, that the accident took place and the charge was laid accordingly. This being the position, it was not at all correct or proper for the Tribunal to have reduced '25%' of the compensation awarded, referring to the alleged negligence on the part of the rider of the scooter.

7. In the above circumstances, we set aside the

observation and finding of the Tribunal to the above extent and declare that the appellant is entitled to have the entire compensation of **Rs.147576/-** with interest as specified by the Tribunal. Since the policy is admitted, the Insurance Company is directed to satisfy the entire amount of compensation with interest, except for 430 days of delay involved, by virtue of the interim order passed by this Court on 21.01.2015 holding that interest will not be payable for the said period.

The appeal stands disposed of.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**K. HARILAL,
JUDGE.**