

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

MACA.No. 546 of 2011 ()

OPMV 1036/2006 of M.A.C.T.,KOTTAYAM

APPELLANT/CLAIMANT:

SABU K.D,S/O.DIVAKARAN,THAIMADOM HOUSE,
THALAYOLAPARAMBU P.O, VAIKOM.

BY ADVS.SRI.H.RAMANAN
SRIP.RAJEEV
SRI.ALEX N.MATHEW (KOLLAM)
SRI.JAMES JOSE

RESPONDENTS/RESPONDENTS :

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1. ANEESH,PAINAPPALLIL,THALAYOLAPARAMBU P.O.,
P.O, VAIKOM, 686 605.
 2. SHAMEER M.A,MAMPAZHATHIL HOUSE,
THALAYOLAPARAMBU P.O, VAIKOM. 686 605.
 3. THE UNITED INDIA INSURANCE CO.
KOTTAYAM. 686 001.

R3 BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.A.C.A. No.546 of 2011

Dated 17th July, 2015.

J U D G M E N T

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

2. The claim petition referred to above was filed alleging that the claimant sustained injuries in the accident took place on 25.4.2006, involving a motor cycle owned by the second respondent and ridden by the first respondent, while the claimant was walking along the Korickal - Thalayolaparambu road. It is also alleged by the claimant that the motor cycle involved in the accident came from behind and hit the claimant. Respondents 1 and 2 remained ex parte in the proceedings. The third respondent, the insurer of the vehicle contested the claim petition. The fact that the vehicle involved in the accident was covered by a valid insurance policy was not

disputed. The contention, however, was that the claimant was riding on the pillion of the said vehicle and the accident occurred not as alleged in the claim petition. According to them, the pillion rider of the above vehicle was not covered by the insurance policy issued by them.

3. The Tribunal took the view that in the final report filed by the police in the case registered in connection with the accident, the version regarding the accident is that the claimant was riding on the pillion of the vehicle involved in the accident and that the said version is not consistent with the case set up by the claimant in the claim petition. Having taken the said view, the Tribunal dismissed the claim petition holding that in the circumstances, the claimant should have adduced oral evidence in the matter and in the absence of oral evidence from his side, the claim petition can only be dismissed. Though the claim petition was dismissed for the said reason, the Tribunal fixed the compensation due to the claimant at Rs.23,745/-. The claimant is aggrieved by the said decision of the Tribunal.

4. Heard the learned counsel for the appellant and

the learned counsel for the third respondent.

5. As noticed by the Tribunal, the version regarding the accident set up by the claimant in the claim petition is not consistent with the police records. The Tribunal, in a case like this is not bound by the version of the police in the final report filed in the crime registered in connection with the accident. The Tribunal, on the basis of the materials on record, has to render a finding as to whether the case set up by the claimant is correct or not. Of course, in the matter of rendering a finding to that effect, the Tribunal can refer to all the materials including the final report submitted by the police in the crime. It is in the said view of the matter, the Tribunal found that it is a case where the claimant should have adduced oral evidence. The claimant is not disputing the fact that he has not adduced oral evidence. According to the claimant, when the claim petition was listed for trial, he filed I.A.No.4592 of 2009, seeking orders to permit him to adduce oral evidence in the matter and though the said application was closed by the Tribunal, holding that the claimant is entitled to adduce oral

evidence even without an application, the claim petition was disposed of without affording him an opportunity to adduce oral evidence. A perusal of the records in the case indicate that the said stand of the Tribunal is correct. It is seen from the records that I.A.No.4592 of 2009 filed by the claimant seeking permission to adduce oral evidence was closed by the Tribunal holding that the claimant is entitled to adduce oral evidence without permission. At the same time, the records do not indicate that the claimant was given an opportunity to adduce oral evidence by the Tribunal. In the circumstances, the claimant being the victim of a motor accident, I am of the view that he should be given yet another opportunity to adduce oral evidence in the matter.

6. In the result, the impugned award is set aside and the matter is remitted to the Tribunal for fresh disposal after affording the claimant an opportunity to adduce oral evidence in the matter. The parties are directed to appear before the Tribunal on 17.8.2015. Since the claim petition is of the year 2006, I deem it appropriate to direct the Tribunal to dispose of

the claim petition, as expeditiously as possible, at any rate, within a period of three months.

The M.A.C.A. is disposed of as above.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)