

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

MACA.No. 923 of 2013 ()

**AGAINST THE AWARD IN OP(M.V.) 660/2005 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
ATTINGAL DATED 31-01-2013**

APPELLANT/APPLICANT:

**RAMESH BABU @ RAMESH AGED 31 YEARS
S/O.BABU, SREEMANGALATHU VEEDU, KOKKOTHAMANGALAM
MUDELA P.O., NEDUMANGADU.**

**BY ADVS.SRI.R.T.PRADEEP
SRI.P.BIJIMON**

RESPONDENTS/RESPONDENTS:

**1. SREEKUMARI, AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER
PLAVILAPUTHEN VEEDU, MANGALATHU KONAM, KATTACHALKUZH
THIRUVANANTHAPURAM, PIN 695 509.**

**2. THE MANAGER
UNITED INDIA INSURANCE CO.LTD., P.B.NO.552
MALANKARA BUILDING, VJT HALL ROAD, PALAYAM
THIRUVANANTHAPURAM, PIN 695 001.**

**3. VINOD M.I., AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER
VRINDAVAN, PAZHAKUTTY, NEDUMANGADU
THIRUVANANTHAPURAM-695 307.**

**R2 BY ADV. SRI.PMM.NAJEEB KHAN
R BY SRI.JOHN JOSEPH VETTIKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.923 of 2013

Dated this the 18th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

The appeal is against the award in O.P.(M.V.)No. 660/2005 on the file the Motor Accidents Claims Tribunal, Attingal.

2. The learned counsel for the appellant submitted that it was wrong on the part of the Tribunal to reject the application itself. It is submitted that the police records Exts.A1 to A3 and the treatment records Ext.A4 to A8 support the case of the applicant for reasonable compensation.

3. The accident occurred on 15.2.2005 at 3.p.m. The claimant was riding a motorcycle bearing registration No.KL-01/F-7540 along Nettarachira – Mundela public road. It was hit by an autorickshaw bearing registration No.KRY-

6179. It is his case that he sustained serious injuries in the accident. He was initially treated in the Taluk Headquarters Hospital, Nedumangad and Ext.A4 wound certificate has been produced by the claimant to prove the same. The Tribunal has gone to the details of the FIR, scene mahazar and the charge. But the conclusion drawn is that there is no evidence or tangible terms in respect of the two vehicles; autorickshaw bearing No.KRY-6179 and the motorcycle No.KL-01/F-7540 involved in the accident. It is submitted that the said conclusion cannot be supported in the light of Exts.A1 to A4. Going by the decision of this Court in **New India Assurance Co. Ltd. v. Pazhaniammal [2011 (3) KLT 648]** a charge sheet filed by the police is prima facie sufficient evidence to prove negligence. Here there was no contra evidence also. Therefore, the said view taken by the Tribunal cannot be supported at all.

4. It is submitted by the learned counsel for the Insurance Company that the applicant has not produced the

mahazars of the two vehicles. But the lack of the same cannot be said to be a point to hold that the accident itself had not happened. If at all the Tribunal wanted to have more particulars, the concerned police officer should have been directed to be examined, which has not been done.

5. As far as the hospital records are also concerned, the Tribunal did not accept the case of the appellant, which is without any justification. The Tribunal had to assess the various items of evidence and then discuss the injury sustained, the disability sustained and other treatment details. It is clear that the Tribunal had to examine the question whether the accident was caused due to the use of the vehicle.

6. In the light of the above, we are of view that the approach made by the Tribunal cannot be supported. We vacate all the findings and send back the case for fresh consideration.

7. The parties will appear on 12.10.2015 before the Tribunal and all efforts will be taken to dispose of the

matter finally within a period of six months thereafter. It is open for the parties, if they choose, to adduce evidence oral and documentary.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/