

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

MACA.No. 593 of 2011 ( )

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OPMV 303/2010 of M.A.C.T. TIRUR

APPELLANT(S)/PETITIONER :

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ABDUL RASHEED

AGED 27 YEARS, S/O.ALAVIKUTTY, PARAKKAL HOUSE

MATTATHUR PO, OTHUKKUNGAL, MALAPPURAM DISTRICT.

BY ADVS.SRI.K.P.SUDHEER

SRI.SUMODH MADHAVAN NAIR

RESPONDENT(S)/RESPONDENTS 1 AND 2 :

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1. ABOOBACKER, S/O.MUHAMMED,  
MOOLAYIL HOUSE, CHEMMANKADAVU, KOTTAPPADI PO  
MALAPPURAM DISTRICT.

2. ABIDHA, W/O. ABOOBACKER,  
DO..DO...

R2 BY ADV. SRI.P.SAMSUDIN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 13-03-2015, ALONG WITH MACA. 84/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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**M.A.C.A. Nos.593 of 2011 & 84 of 2012**  
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**Dated 13<sup>th</sup> March, 2015.**

**J U D G M E N T**

The common award in two petitions for compensation before the Motor Accidents Claims tribunal is under challenge in these appeals. The claimants in the petitions are the appellants.

2. The claim petitions were filed alleging that the claimants have sustained injuries in an accident took place on 6.1.2010, involving a vehicle owned by the second respondent and driven by the first respondent. The vehicle at the time of the accident was not covered by an insurance policy. The Tribunal, though found that the claimants sustained injuries in the accident took place on 6.1.2010, dismissed the claim petitions holding that the appellants have not established that the accident occurred on account of the negligence of the first respondent. The appellants are, therefore, aggrieved by the said decision of the Tribunal.

3. The common issue No.1 framed by the Tribunal

was whether the accident occurred on account of the negligence of the first respondent and that the said issue was answered by the Tribunal thus :

“7. Issue No.1 in both cases : Ext.A1 is the copy of the F.I.R. in Crime No.6/2010 of Kottakkal Police Station. The above crime was registered on the basis of the statement covered by Ext.A2. According to the petitioner in O.P.(MV) No.302/2010, on 6.1.2010 at about 1.30 PM while he was proceeding along with the petitioner in O.P.(MV) No.303/2010 as a pillion rider an Autorickshaw bearing No.KL-11-Z-3443 came from the opposite side and while trying to take attempts to over take a Goods Autorickshaw hit to the Motor Cycle and an accident was happened and both of the petitioners sustained injuries. Ext.A4 and A5 reveal that the accident was happened not due to the mechanical defect of the vehicles involved in the accident. No copy of the charge sheet in the above crime is produced before me. When the application is filed under section 166 of the M.V. Act, it is the duty upon the petitioner to prove that the negligence is on the side of the first respondent who driven the offending vehicle. No oral evidence is adduced by the petitioners to substantiate the fact that the accident was happened on account of the rash and negligent driving of the Autorickshaw by the first respondent. The absence of first and the second respondent alone is not the reason to believe the statement covered by Ext.A2. There is also no document to show that the first respondent is the person who driven the Autorickshaw at the time of the accident. Since the above crucial aspects have not

been clarified by producing the charge sheet or by tendering evidence before, I am hesitant to come to a conclusion that the accident was happened due to the rash and negligent driving of the Autorickshaw bearing NO.KL-11 Z-3443 by the first respondent. Issue is answered accordingly.”

It is evident that the claim petitions were dismissed by the Tribunal for the reason that the claimants have not adduced oral evidence in the matter and for the reason that they have not produced the final report in the crime registered in connection with the accident.

4. It is beyond dispute that in claim petitions before the Motor Accidents Claims Tribunals, oral evidence of the claimants is not insisted now and the claim petitions are disposed of based on the documents produced by the claimants. As such, it was inappropriate for the Tribunal to dismiss the claim petitions on the ground that the claimants have not adduced oral evidence in the matter. There is nothing on record to indicate that the claimants had been directed by Tribunal to adduce evidence and they failed to do so. Further,

the appellant in M.A.C.A. No.84 of 2012 has produced before this Court the final report submitted by the police in the crime registered in connection with the accident. The final report produced before this Court indicates that proceedings have been initiated against the first respondent for having committed the offences punishable under Sections 279 and 338 of the Indian Penal Code in connection with the accident referred to in the claim petitions. In the said circumstances, I am of the view that the finding of the Tribunal that the claimants have not established negligence on the part of the first respondent in causing the accident needs to be interfered with and the matter has to be remitted to the Tribunal for fresh decision on the question of negligence.

5. In the result, the impugned common award is set aside and the Tribunal is directed to dispose of the claim petitions afresh, after affording the parties an opportunity to adduce evidence. Since the claim petitions are of the year 2010, I deem it appropriate to direct the Tribunal to dispose of

the claim petitions as expeditiously as possible, at any rate, before 31.7.2015. The parties are directed to appear before the Tribunal on 6.4.2015.

The Registry is directed to return to the appellant in M.A.C.A.No.84 of 2012 the additional document produced along with I.A.No.75 of 2012.

Sd/-

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

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(true copy)