

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

MACA.No. 1028 of 2013 ()

AGAINST THE AWARD IN OPMV 744/2005 of M.A.C.T.,ATTINGAL DATED
30-06-2012

APPELLANT/APPLICANT:

SURESH BABU
S/O.KRISHNAN, VALIYAVILAKATHU VEEEDU, PULLATTUKARIYIL
KAZHAKOOTAM P.O.

BY ADVS.SRI.R.T.PRADEEP
SRI.J.ROBINSON

RESPONDENTS/RESPONDENTS

1. DEEPU S.S
SANTHI NIVAS, KP.14/569, KAZHAKOOTAM
THIRUVANANTHAPURAM 695 582.

2. THE MANAGER,
THE ORIENTAL INSURANCE CO.LTD., DIVISIONAL OFFICE
THIRUVANANTHAPURAM - 695 001.

R2 BY ADV. SRI.VPK.PANICKER

R1 BY ADV. SRI.G.SUDHEER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1028 OF 2013

Dated this the 20th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

When the appeal came up for consideration, we heard the learned counsel for the appellant and the learned counsel for the respondents.

2. It is a case where even though the appellant sustained injuries in an accident, the Tribunal below was of the view that the case of the appellant that he was hit by an ambassador car has not been proved properly and accordingly the claim was rejected. His case is that he was a pedestrian standing on the side of Kazhakuttom - Menamkulam public road on 12.5.2005 at 4 p.m. He was hit by an ambassador car bearing Reg.No.KLY-9621 driven by one Umesh. It is also his case that he was treated as outpatient in the Medical College and the certificates have been produced along with Police records and Exts.A1 to A7 have been marked in evidence.

3. Ext.A1 is the copy of the FIR of Kazhakoottom police

station. Ext.A2 is the copy of the scene mahazar. Ext.A3 is the charge sheet.

4. The learned counsel for the appellant submits that the view taken by the Tribunal that the ambassador car may not be involved in the accident merely for non production of the document like vehicle mahazar cannot be sustained. It is submitted that the Police have investigated the case and the charge sheet has been produced as Ext.A3. In respect of point No.1, the finding is that the petitioner should have adduced evidence showing the involvement of ambassador car bearing Reg.No.KLY - 9621 and that he was knocked down by the said car. We find from Ext.A3 itself that the Police have arranged inspection of the vehicle through the Motor Vehicle Inspector. We find no reason to suspect in any manner the final report submitted by the Police in the light of the judgment of this Court in **New India Assurance Co. Ltd. v. Pazhaniammal (2011 (3) KLT 648)**, wherein it was held that charge sheet will be prima facie sufficient evidence to prove negligence. There was no attack against Ext.A3 on the part of the respondents also by adducing any contra evidence. Therefore, the

veracity of the Police records cannot be said to have been breached. We therefore accept the charge sheet Ext.A3 and hold that the accident is one involving the ambassador car bearing Reg.No._KLY - 9621. The details of the injuries will show that he had fracture of lateral malleolus on the right ankle and fracture of 5th metatarsal bone on the right foot. It is clear from the certificates Exts.A4 to A7 that the appellant was treated as outpatient with OP No.68298. The Tribunal was of the view that since he has sustained injuries, he should have been treated as an inpatient. We cannot agree with the said observation because the treatments have been obviously prescribed by the Doctor himself. It is clear from Ext.A7 that plaster cast was applied and it had to be continued for a period of four weeks. It is seen that the same was removed on 14.1.2005. The said certificate is issued by the Department of Orthopaedics, Medical College Hospital, Thiruvananthapuram. We find no reason to doubt the same.

The appellant was a coolie by profession and claimed monthly income @ ₹ 5,000/-. The permanent disability now assessed is 5% in view of the partial stiffness of the right ankle joint with limitation of

terminal 10-15 degree dorsiflexion and terminal 15 degree plantar flexion. There is swelling and tenderness over the right ankle joint due to synovial irritation of the joint.

5. It is clear that the physical injuries will have to be compensated. Being a coolie, it has slightly affected his capacity to do work also. But at the same time 5% disability is not whole body disability also. Therefore, after considering all these matters, we fix a reasonable amount of compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transportation expenses	1500
Extra nourishment	1000
Damage to clothing	1000
Pain and suffering	25000
Partial loss of earnings for 1 ½ months	7500
Disability	10000
Loss of amenities	10000
Total	56000 (Rupees fifty six thousand only)

6. The compensation amount will carry interest @ 9% per annum from the date of filing of the petition. Since the policy is

admitted, we hold that the Insurance Company is liable to satisfy the award and indemnify the owner. There will be a direction to the Insurance Company to deposit the amount with interest within three months. We permit the appellant to withdraw the amount also.

The appeal is accordingly allowed. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.