

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

MACA.No. 1141 of 2013 ()

AGAINST THE AWARD IN OPMV 399/2001 of MACT MUVATTUPUZHA DATED 24-02-2005
APPELLANT(S)/PETITIONER:

MUHAMMED
S/O.ALIYAR, KATTAKKUZHIYIL HOUSE, ASAMANNOOR P.O.
NOOLELI.

BY ADVS.SRI.T.K.KOSHY
SMT.V.V.RISANI

RESPONDENT(S)/RESPONDENTS/RESPONDENTS 1 TO 3:

1. M.A. SASI
MUKULATH HOUSE, KARUKADOM P.O., VENDUVAZHI
KOTHAMANGALAM, PIN 686691.

2. GEORGE JOSEPH
KANJIRATHUMOOTIL HOUSE, KOZHIPPILLY P.O.
KOTHAMANGALAM, PIN 686691.

3. THE BRANCH MANAGER
UNITED INDIA INSURANCE CO.LTD.
MUNICIPAL SHOPPING COMPLEX, MUVATTUPUZHA, PIN 686661.

R2 BY ADV. SRI.ELDHO PAUL
R3 BY SRI.JOHN JOSEPH VETIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
05-03-2015, ALONG WITH RP 919/2014, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.**

M.A.C.A.No.1141/2013 & R.P.No.919/2014

Dated this the 5th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The appeal is one filed by the appellant/injured. The award in O.P.(MV) NO.399/2001 is dated 24.2.2005. The appeal is filed with a petition to condone the delay of 2890 days. By order dated 6.11.2014 we allowed C.M.Appl. No.1385/2013 for condoning the delay on condition that if ultimately the appeal is allowed, the insurance company will not be liable to bear the burden for payment of interest for the period covered by the delay. It is against the above order, the review petition is filed.

2. We heard the appeal and the review petition together.

3. The review petition is mainly on the plea that the condition that the company will not liable to pay interest for the period covered by the delay, may be deleted, as it will deprive the appellant the interest portion (a part of it), if ultimately compensation is awarded.

4. We heard learned counsel for the appellant, Shri T.K. Koshy, learned counsel for the second respondent Shri Eldho Paul and learned counsel for the insurance company, Shri John Joseph Vettikad.

5. The appeal is filed with a petition to condone the delay of 2890 days. According to the learned counsel for the appellant, the condition excluding interest for the said period is unwarranted. The appellant had suffered 70% disability. It is stated in the affidavit that the appeal was entrusted to be filed to a counsel. It was actually a case where the counsel who was entrusted with the filing of appeal, had not divulged the details of filing appeal and the appellant had filed a complaint before the Bar Council against the said counsel which was returned by the Bar Council as per Annexures A and B for curing certain defects. He could not re-present the complaint and did not pursue the same also. He was not having the details of appeal or its number. He made enquiries in the Registry of this Court and found that no appeal has been filed and therefore in March, 2013 the present counsel has filed the appeal.

6. The above is a dispute between the appellant and his former

counsel. Learned counsel for the insurance company rightly submitted that the company may not be held liable for payment of interest for delay caused due to such a dispute.

7. We heard learned counsel for the review petitioner/appellant in detail, since learned counsel submitted that this Court may reconsider the order passed in the application for condoning the delay, by making the order conditional.

8. It is a case where the application for compensation itself was dismissed from which the appeal has been filed. Therefore, no part of compensation has been allowed to the appellant and it is not a case of enhancement of compensation already awarded. In that view of the matter, we find that there is no apparent error in the order and we cannot agree with the vehement plea raised by the learned counsel for the appellant.

9. The review petition is therefore dismissed.

10. Now we proceed to consider the appeal. The appellant met with an accident on 20.11.2000. He was riding a motor cycle and was knocked down by lorry bearing Reg. No. KBF 5207. He was treated

in M.B.M.M. Hospital, Kothamangalam and Medical College Hospital, Kottayam. Before the Tribunal, evidence was let in and Exts.A1 to A13 have been marked. Ext.B1 is the copy of the policy. The Police had registered Crime No.501/2000 of Kothamangalam Police Station and Ext.A1 is the copy of the F.I.R. Ext.A2 is the copy of the scene mahazar and Exts.A3 and A4 are the copies of the AMVI reports. Ext.A5 is the copy of the wound certificate.

11. Issue No.1 is as to who is responsible for the accident. The Tribunal found from the scene mahazar that certain parts of the motor cycle had sustained damage. The Tribunal, after going through the charge-sheet, observed that, the charge is mainly that the lorry hit on the left side of motor cycle. Finally it was concluded that no damage to the motor cycle on its left side was noted by the Police or by the Vehicle Inspector who inspected the vehicle after the accident, and hence negligence on the part of the driver of the offending vehicle has not been proved.

12. Learned counsel for the appellant submitted that merely because of the fact that no damage is noted on the left side, the Tribunal

cannot conclude that the accident has not happened due to the negligence of the driver of the offending vehicle. This is a case where the Police charge prima facie established negligence as against the driver of the lorry and the respondents have not adduced any evidence to show that the charge is not correct. Therefore, learned counsel for the appellant submitted that the finding that the negligence has not been proved, is unjustified. Alternatively, it is submitted that the appellant may be allowed an opportunity to adduce further evidence in the matter.

13. Learned counsel for the second respondent and learned counsel for the insurance company submitted that if the matter is remanded, they may also be allowed to adduce evidence.

14. We find from the award that no oral evidence has been adduced. Therefore, we find it reasonable to grant an opportunity to the appellant as well as the other parties to adduce oral evidence on all aspects regarding the accident, the injuries sustained and the claims of compensation under various heads.

Hence, the award is set aside. O.P.(MV) No.399/2001 is

remanded for consideration by the Tribunal afresh. We allow all parties fresh opportunity to adduce evidence also. Accordingly, the appeal is allowed and the review petition is dismissed. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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