

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

MACA.No. 896 of 2011 ()

**AGAINST THE AWARD IN OPMV 197/2007 of MOTOR ACCIDENTS CLAIMS
TRIBUNAL,,KOTTAYAM DATED 31-01-2011**

APPELLANT/PETITIONER :

**VIMALADEV.T.M.@ VIMAL (MINOR),
REP. BY HIS NEXT FRIEND AND, FATHER MANOHARAN,
THEKKECHIRA VEEDU, SRAMBIMATTOM, VECHOOR.**

**BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH**

RESPONDENTS/RESPONDENTS :

***1. BABU.N.S., NIKARTHIL (H),
CHERTHALA - 688 524. (DELETED)**

***2. OUSEPH THOMAS,
VELLAVELI (H) VARANADU P.O.,
CHERTHALA - 688 543. (DELETED)**

**3. THE UNITED INDIA INSURANCE CO.LTD.,
KOTTAYAM - 686 001.**

***DELETED :**

***R1 & R2 ARE DELETED FROM THE PARTY ARRAY AS PER ORDER
DT 24/6/2015 IN IA 2075/2011.**

R3 BY ADV. SRI.T.J.LAKSHMANAN IYER

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

M.A.C.A.No.896 of 2011

Dated this the 29th day of July, 2015

JUDGMENT

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

2. The claimant was a boy aged 10 years at the time of the accident. The accident took place on 18.7.2005. The case of the claimant in the claim petition was that on the relevant day, at about 4.30 p.m, while he was returning from the school, he had to cross Kallara- Vechur road at Kadathuruthy and while crossing the said road, the motor cycle driven by the first respondent came from east in a negligent manner and hit him. According to him, he sustained fracture of clavicle right and contusion of left knee

in the accident and he was immediately taken to the Medical College Hospital, Kottayam. In support of the case put forward by the claimant who was a minor, his father gave evidence as PW1. A witness was also examined on the side of the claimant as PW2. The Tribunal, however, did not accept the case set up by the claimant on the ground mainly that no case was registered in connection with the accident and that the evidence tendered by PW2 to prove the occurrence cannot be relied on as he is a friend of the father of the claimant. According to the Tribunal, since the factum of accident was not reported either by the claimant or by the hospital authorities to the police, it has to be inferred that the claimant had not sustained injuries in the motor accident as alleged in the claim petition. It was also observed by the Tribunal that while the version of the claimant regarding the accident is that the accident occurred while he was crossing the road, the version of the PW2 is that the accident occurred while the claimant was standing

on the side of the road. Though the Tribunal found that the claimant has not established the accident, the Tribunal determined the compensation payable to him at Rs.13,600/-. The claimant is aggrieved by the said decision of the Tribunal and hence this appeal.

3. Heard the learned counsel for the appellant.

4. The reason stated by the Tribunal for holding that there was no accident as alleged by the claimant in the claim petition cannot be accepted. As pointed out earlier, the specific case of the claimant is that he sustained injuries while crossing the road on 18.7.2005. Ext.A1 series are the O.P. tickets issued to the claimant from the Medical College Hospital, Kottayam. Ext.A1 series indicate that he was taken to the Medical College Hospital on the very same day, at about 6 p.m. It is recorded in Ext.A1 that the claimant sustained injuries in the motor accident while crossing the road. The respondents have no case that Ext.A1 is not a genuine document. If the genuineness of Ext.A1 is not

disputed, according to me, the said document is sufficient to hold that the claimant sustained injuries in the motor accident as alleged by him in the claim petition. The view of the Tribunal that neither the claimant nor the hospital officials reported the accident to the Police and therefore, it has to be presumed that the case of the claimant is incorrect, cannot be accepted. Merely for the reason that the claimant had not informed the Police about the accident, it cannot be said that the accident had not taken place at all. The hospital authorities were duty bound to inform the accident to the Police, and the claimant cannot be made responsible for the laches on their part. The affidavit filed in lieu of the chief examination by PW2 indicates clearly that the version given by him as regards the accident is that the claimant sustained injuries in the accident while crossing the road and not while standing on the side of the road as found by the Tribunal. In the circumstances, the finding of the Tribunal that the claimant had not sustained injuries in the

motor accident as alleged by the claimant is liable to be vacated.

In the result, the appeal is allowed, the impugned award is set aside and an award is passed permitting the claimant to recover a sum of Rs.13,600/- from the third respondent by way of compensation with interest at the rate of 9% per annum from the date of the claim petition.

P.B.SURESH KUMAR, JUDGE.

smm