

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

MACA.No. 39 of 2009 (A)

AGAINST THE AWARD IN OPMV 2063/2003 of PRL.M.A.C.T.,KOZHIKODE
DATED 19-03-2008

APPELLANT(S)/PETITIONER IN OPMV:

KUNHAMINA, W/O.AMMED, KULAMPADANNA,
MANKAVU POST, THALIKULANGARA, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT(S)/RESPONDENTS IN OPMV:

1. ASOKAN, CHEMBOOLLY, AVANTHIKA HOUSE,
PERAMBRA, KOZHIKODE.

2. THE NEW INDIA ASSURANCE CO.LTD.,
TRIPURI BUILDING, EAST NADAKKAVU, KOZHIKODE.

ADDL. 3. DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTERS, TRIVANDRUM

(ADD.R3 IMPEADED VIDE ORDER DATED 12.01.2009 IN MACA)

R,R2 BY ADV. SRI.MATHEWS JACOB (SR.)

R,R2 BY ADV. SRI.P.JACOB MATHEW

R3 BY DIRECTOR GENERAL OF PROSECUTION

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A No.39 of 2009-A

Dated this the 9th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant is aggrieved by the rejection of the application for compensation on technical grounds, by the Motor Accident Claims Tribunal. She filed an application claiming compensation to the tune of Rs.2 lakhs for the injuries sustained in an accident which occurred on 30.04.2003 at 9.30 a.m. It is averred that she was a pedestrian and was hit by a motorcycle bearing Reg.No.KL-11-P-5916 and she had undergone a major surgery.

2. The Tribunal in para.6 noticed that the driver of the vehicle is not a party but in column Nos.16 and 23 of Ext.A1, which is a copy of the first information statement, one Ashokan is shown as owner and driver. It is stated that there is a huge delay in preferring the complaint also. The Tribunal observed

that the wound certificate has also not been produced and a final chance was given for adducing evidence. On 30.11.2007 the appellant was absent and no oral and documentary evidence have been produced. After marking Ext.A1 suo motu, the claim petition has been rejected.

3. The learned counsel for the appellant submitted that the appellant was not granted sufficient opportunity to produce the records. It is submitted that a lenient view may be taken and this Court may grant a further opportunity to produce all the relevant documents including treatment records.

4. We heard the learned Senior Counsel for the Insurance Company also. It is submitted that by an interim order dated 12.01.2009, this Court had directed the appellant to produce records before this Court.

5. Since the evidence will have to be adduced before the Tribunal itself, we think it will be proper to direct the appellant to produce the relevant records and adduce evidence in support of the application. It is also seen that the claim petition was dismissed when the appellant was absent. Of course the Tribunal has explained the reasons. We set aside the award and

remand the matter back to the Motor Accident Claims Tribunal, Kozhikode, for proceeding afresh in accordance with law.

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

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge