

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

MACA.No. 1458 of 2013 ()

AGAINST THE AWARD IN OPMV 982/2006 of M.A.C.T.,ATTINGAL DATED
30-04-2013

APPELLANT/APPLICANT:

SUDHEESH K.
AGED 26 YEARS, S/O. AYYAPPAN, KOTTAPPARAMBIL HOUSE
MALANGADY P.O., KONDOTTY, MALAPPURAM.

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

RESPONDENTS/RESPONDENTS:

1. NANDA KUMAR
SECRETARY, M/S. KALPAN COMMUNICATION, P.B. NO. 14
KUNDARA P.O., KOLLAM - 691 501.

2. THE MANAGER,
UNITED INDIA INSURANCE COMPANY LIMITED
NAVANEETHA BUILDING, MUKKADU, KUNDARA - 691 501.

3. SAIDU
S.K. HOUSE, THURAKKADU P.O., KONDOTTY
MALAPPURAM - 673 638.

R3 BY ADV. SRI.P.M.RAFIQ
R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1458 OF 2013

Dated this the 12th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant before the Tribunal aggrieved by the rejection of the claim petition itself.

2. We heard the learned counsel for the appellant and the learned counsel for the Insurance Company.

3. The accident occurred on Kazhakuttom- Attingal NH road. The date of accident is 21.3.2006 and two vehicles are involved ; one a mini lorry bearing Reg.No.KL-13/J-1853 and a Mahindra van bearing Reg.No.KL-02-L-6509. The time of accident is 3 a.m. The vehicles were coming in opposite direction and the claimants alleged that the driver of the Mahindra van drove the vehicle in excess speed. The driver of the mini lorry is the claim petitioner herein. There were different claim petitions filed by the occupants of mini lorry and all

were jointly tried.

4. The learned counsel for the appellant submitted that in spite of production of Exts.A1 to A4 to prove the accident, the Tribunal went on a tangent and made observation mainly on the ground that claimants are passengers of the mini lorry which was a heavy vehicle compared to the Mahindra van and non sustaining of damage to Mahindra van will make the entire thing doubtful. The said reasoning is obviously unacceptable, according to us. It is also submitted that the Tribunal was of the view that the driver of the mini lorry would have slept for a while leading to the cause of the accident. According to us, without any evidence to that effect such a conclusion could not have been drawn. The learned counsel for the appellant is right in submitting by relying upon the decision in **New India Assurance Co. Ltd. v. Pazhaniammal (2011 (3) KLT 648)** that charge sheet is prima facie sufficient evidence to prove negligence.

5. Even though the learned counsel for the Insurance Company submitted that more evidence should have been there,

according to us, a proper analysis of the evidence was required by the Tribunal which was never attempted. There was no contra evidence on the part of the respondents. The comments made against the officials of the Police Department for not taking steps for inspection of vehicles by the Motor Vehicle Department cannot also be justified since nobody had such a case before the Tribunal and if at all the respondents had any challenge against the documents, they should have summoned the Police officer and examined him. Having not done or attempted anything like that, we fail to understand as to how such an observation could have been made by the Tribunal that petitioners in the claim petitions have suppressed the real genesis of the accident from the Tribunal. Therefore we vacate the findings on point No.1.

6. As far as point No.2 is concerned, it is clear that the Tribunal's view was that in spite of production of medical records, since the accident is not proved, the claimant is not entitled for any compensation. Since we have vacated the finding on point No.1, we vacate the finding on point Nos. 2 and 3.

Accordingly, the impugned award as far as O.P.(MV) No.982/2006 is concerned is set aside and the matter is remanded back to the Tribunal for fresh consideration. All aspects will be analysed and appropriate award will be passed by the Tribunal. It is open to the parties to adduce evidence also. The Tribunal will expedite the proceedings and will dispose of the matter atleast within six months after receipt of the certified copy of the judgment. Parties will suffer their costs in this appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.