

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

MACA.No. 480 of 2014 ()

AGAINST THE AWARD IN OPMV 422/2011 of M.A.C.T., KOLLAM DATED 26.06.2013

APPELLANTS/PETITIONER:

HENRY, AGED 43 YEARS
S/O.JOSEPH KURUSUMMOOTIL PADINJATTATHIL
NEAR ST JUDE SHRINE, NEENDAKARA P O, KOLLAM-691582

BY ADVS.SRI.O.V.MANIPRASAD
SRI.SAJU J PANICKER

RESPONDENTS/RESPONDENTS:

1. B.GOPINATHAN PILLAI
S/O.BALAKRISHNA PILLAI, DEVI DERSAN
ATHINADU NORTH P O, KARUNAGAPPALLY, KOLLAM-690542
2. SANJAY K G
S/O.GOPINATHAN PILLAI, DEVI DERSAN, ATHINADU NORTH P O
KARUNAGAPPALLY, KOLLAM-690542
3. THE DIVISIONAL MANAGER,
NATIONAL INSURANCE COMPANY LTD, PARAMESWARA BUILDING
HOSPITAL ROAD, KOLLAM - 690001

R3 BY ADV. SMT.DEEPA GEORGE
BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.480 of 2014

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Dated this the 10th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(MV).No.422 of 2011 on the file of the Motor Accidents Claims Tribunal, Kollam. The respondents are the respondents therein. The brief facts of the case are as follows:

2. The appellant instituted O.P.(MV).No.422 of 2011 before the Motor Accidents Claims Tribunal, Kollam on 22.03.2011 claiming a total sum of ₹2,50,000/- as compensation under various heads. The substance of the case set out in the claim petition is that at about 7 pm on 15.01.2009, while he was standing near St. Jude Shrine at Needakara in Kollam District, a Maruthi car bearing registration No. KI-02 Q 406 owned by the first respondent, driven by the second respondent and insured by the third respondent came at an enormous speed and hit him and in that accident he fell down and sustained fracture of the left leg and serious head injuries. It is stated that he was thereupon taken to District Hospital, Kollam where he underwent treatment as an in-patient from 15.01.2009 to 29.01.2009 and thereafter during the period from 23.02.2009 to 9.03.2009. It is further stated that thereafter he had undergone treatment as an in-

patient at Medical College Hospital, Thiruvananthapuram during the period from 9.3.2009 to 14.3.2009 and after discharge from the said hospital, he is undergoing treatment as an out-patient.

3. The appellant contended that at the time of the accident, he was aged 43 years and was earning an income of ₹6,000/- per mensem, that after the accident he is not in a position to carry out his avocation without the assistance and help of others and that the accident happened solely on account of the rash and negligent driving of the motor car by the second respondent. Respondents 1 and 2 did not enter appearance notwithstanding service of notice and therefore, they were set ex-parte. The third respondent, the insurer of the motor car bearing registration No. K02-Q-406 entered appearance and filed a written statement denying and disputing the averments in the claim petition. The third respondent also contended that the motor vehicle involved in the accident was an Ambassador car bearing registration No.KL-2B-2829, that the claimant's wife Mini had on 28.02.2009 filed a private complaint before the Court of the Judicial Magistrate of First Class, Karunagappally alleging that at about 7 pm on 15.01.2009 while the claimant was standing before St.Jude Kurissady, Neendakara, an Ambassador car bearing registration No.KL-2B-2829 came from south, hit the claimant and thereby he sustained injuries. The third

respondent contended that from the said complaint it is evident that the statement in the claim petition that the motor car involved in the accident was a Maruthi car bearing registration No.KL-02/Q-406 is an after thought and the outcome of a fraud committed by the claimant in collusion with the police. The relevant averments in that regard contained in paragraphs 5, 6 and 7 of the written statement dated 19.3.2013 filed by the third respondent are extracted below for easy reference:

"5. The alleged police case is based on a private complaint filed by Smt. Mini the wife of the petitioner before the JFMC, Karunagappally on 28.02.2009. The alleged accident took place on 15.01.2009 at about 7 PM in front of St. Jude Kurussady, Neendakara NH 47 road. In the private complaint it is stated that the accused is the driver of the Ambassador car bearing Reg. No.KL-2B-2829. It is also alleged that the injured was standing on the western side of road for crossing the road to eastern side. At that time KL-2B-2829 Ambassador car came from south to north direction hit on the body of the injured and thereby he sustained injuries. After the alleged accident he injured was treated in District Hospital, Kollam for 15 days from 15.01.2009 to 29.01.2009 and thereafter from 23.02.2009 to 09.03.2009 and again treated in MCH, Trivandrum from 09.03.2009 to 14.03.2009.

6. From the date of accident till the date of filing of private complaint the alleged car was Ambassador car bearing reg. No.KL-2B-2829. But when the complaint was investigated by the police the vehicle involved in the alleged accident was changed as Maruthi Car Reg. No. KLD2/Q 406. The substitution of new vehicle for the purpose of accident claim is an after

thought of the petitioner and under his influence the real vehicle involved in the alleged accident purposefully omitted by police and arranged a Maruthi Car and a driver in the case. The correct vehicle involved in the accident was an Ambassador car Reg.No. KL02/B 2829. On investigation the police found that the actual car involved in the accident having no insurance policy and the actual driver having no valid driving licence and informed the matter to the petitioner. Thereafter with the help of hired witnesses and undue influence on police the petitioner arranged a new vehicle having policy coverage and a driver who is having driving licence.

7. In the charge submitted by police simply says that the Reg.No. And Type of vehicle stated in the complaint and FIR are only a mistake. The police ought to have investigated the genuineness of averments in the private complaint and the actual vehicle involved in the accident. Nothing is seen from police records to show any proper investigation was done by police in this case. Under the undue influence of petitioner the police charge sheeted a false case to extract money from this respondent."

4. A reading of the written statement indicates that the third respondent had raised a specific contention that the substitution of the Maruthi car in place of the Ambassador car is an after thought. The reason for substituting the car was on account of the fact that the Ambassador car which was really involved in the accident was not covered by a valid policy of insurance and its driver was not having a valid licence and therefore, the claimant had found out a motor car which had valid insurance coverage and a driver with a valid driving

licence, to file the claim petition. The third respondent had also contended that though in the charge sheet it is stated that the registration number and the type of the motor car mentioned in the complaint and the the FIR is mistaken, the police ought to have ascertained whether as alleged in the complaint the claimant was hit by an Ambassador car bearing registration No.KL-2B-2829 and whether the claimant had sustained injuries in an accident involving the Ambassador car as alleged by his wife. But nothing is seen in the police records as to the investigation conducted in that regard. Before the Motor Accidents Claims Tribunal, the claimant was examined as PW1 and Exts. A1 to A9 were marked. No evidence, oral or documentary was adduced on the side of the respondents. The Motor Accidents claims Tribunal considered the rival contentions and held that the case set out by the claimant that he was injured in an accident involving the Maruthi car bearing registration No.KL-02 Q-406 cannot be believed. The claim petition was accordingly dismissed. Hence this appeal.

5. We heard Sri. Saju J Panicker, learned counsel for the appellant. We have also gone through the pleadings and the materials on record as also the lower court records. The case set out in the claim petition is that the accident took place on 15.01.2009. The

claimant has also stated that he had undergone treatment as an in-patient at District Hospital, Kollam during the period from 15.01.2009 to 29.01.2009 and thereafter from 23.02.2009 to 9.3.2009. He has also alleged that he had undergone treatment at Medical College Hospital, Thiruvananthapuram during the period from 9.3.2009 to 14.3.2009. More than a month after the accident, to be exact on 28.02.2009, Smt. Mini, wife of the claimant filed a private complaint as C.M.P.No.2091 of 2009 in the Court of the Judicial Magistrate of First Class, Karunagappally alleging commission of offences punishable under sections 279, 337, 338 of IPC and section 134 (a) and (b) of the Motor Vehicles Act, 1988 against the driver of an Ambassador car bearing registration No.KL-2B-2829. The learned Magistrate forwarded the complaint to the Sub Inspector of Police, Chavara Police Station for investigation under section 156(3) of the Code of the Criminal Procedure. The wife of the claimant had in the said complaint alleged that though a complaint has been filed before the Sub Inspector of Police, Chavara Police Station, the police have not registered a case against the driver of the Ambassador car bearing registration No.KL-2B-2829. The allegation in the aforesaid complaint is that, the claimant sustained injuries on account of the rash and negligent driving of an Ambassador car bearing registration No.KL-2B-2829 while he was

standing near a chapel at Neendakara. The police after investigation filed Ext.A2 charge sheet implicating the driver of the Maruthi car bearing registration No.KL-02Q-406. The police have in Ext.A2 charge sheet stated that on investigation it was revealed that in the complaint the registration number of the motor car was erroneously given. Ext.A2 charge sheet does not disclose whether the police had questioned the owner and driver of the Ambassador car bearing registration No.KL-2B-2829. Though the claimant had, in the proof affidavit filed by him in lieu of chief examination averred that he sustained injuries when he was hit by the motor car bearing registration No.KL-02Q-406, he had in cross examination admitted the fact that his wife had filed a private complaint in the Magistrate's court after being satisfied about the identity of the car involved in the accident. PW1 had, when he was cross examined, deposed as follows:

ഇടിച്ച വാഹനത്തിന്റെ നമ്പർ ഇടിച്ച സമയം എനിക്ക് അറിയാമായിരുന്നു. witness corrects എനിക്ക് അറിയത്തില്ലായിരുന്നു. മജിസ്ട്രേറ്റ് കോടതിയിൽ അന്യായം കൊടുത്തു. ഇടിച്ച വാഹനത്തിന്റെ നമ്പർ ബോധ്യപ്പെട്ടിട്ട് തന്നെയാണ് അന്യായം കൊടുത്തത്. ഇടിച്ച വാഹനം ശരിയായി ബോധ്യപ്പെട്ടിട്ടാണ് അന്യായം കൊടുത്തതെന്ന് പറയുന്നു. (Q) ആണ്. (A)

6. It is evident from the materials on record that the case set out by the claimant's wife more than a month after the accident, was that her husband/the claimant herein, sustained injuries in an accident involving an Ambassador car bearing registration No.KL-2B-

2829. The allegation in the private complaint is that though a complaint had been filed before the Sub Inspector of Police, Chavara Police Station no action was taken and therefore she is constrained to file the private complaint. In the course of the investigation, the number of the car was changed and the charge sheet was laid against the driver of the Maruthi car bearing registration No.KL-02-Q 406. It is evident from the admitted facts that the case set out by the claimant that he was injured in an accident involving the motor car bearing registration No.KL-02-Q 406 cannot be believed. The contention raised by the third respondent that a false charge sheet has been laid with a view to enable the claimant to file a claim petition and realise the amount awarded as compensation from the insurer does not seem to be far off mark, having regard to the case set out by the claimant's wife at an earlier point of time that he was injured in an accident involving an Ambassador car bearing registration No.KL-2B-2829.

7. In the light of the overwhelming evidence on record we are of the opinion that the finding entered by the Motor Accidents Claims Tribunal that the Maruthi car bearing registration No.KL-02 Q 406 was not involved in the accident cannot be said to be perverse or a finding not supported by evidence. Though the learned counsel for the appellant contended that the accused against whom Ext.A2 charge

sheet was laid had pleaded guilty of the charge and therefore, there is no reason to hold that a false case was foisted against him, as the entire exercise was aimed at creating evidence to enable the appellant/claimant to file a claim petition against the owner and driver of a motor car which had a valid policy of insurance, we are not satisfied that adequate grounds have been made out to interfere with the judgment delivered by the Motor Accidents Claims Tribunal dismissing the claim petition. It is probable that police had during the investigation found that the Ambassador car bearing registration No.KL-2B-2829 was not covered by a valid policy of insurance and had foisted a false case against the second respondent.

For the reasons stated above, we hold that there is no merit in the appeal. The appeal fails and it is dismissed *in limine*.

**P.N.RAVINDRAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

kp/-