

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

MACA.No. 1660 of 2013 ()

AGAINST THE AWARD IN OPMV 1774/2004 of M.A.C.T.,ATTINGAL DATED
28-02-2013

APPELLANT/APPLICANT:

JAFFARKHAN A.M. AGED 34 YEARS
S/O. MUHAMMAD, SHYLA MANZIL, VINOBA NIKETHAN P.O.
ARYANADU.

BY ADV. SRI.R.T.PRADEEP

RESPONDENTS/RESPONDENTS:

1. J.SABU
6/329, POYAKAYIL, MALAYADI
THOLICODE, NEDUMANGADU - 695 541

2. THE MANAGER
THE ORIENTAL INSURANCE CO. LTD.
DIVISIONAL OFFICE NO. 2, ST.MARY VILLA, ULLOOR
THIRUVANANTHAPURAM - 695 011.

BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1660 OF 2013

Dated this the 21st day of August, 2015

JUDGMENT

Ramachandran Nair, J.

The claimant before the Tribunal is the appellant and he is aggrieved by the rejection of the claim itself, without adjudicating any amount as compensation and the finding that the accident could not have occurred in the manner as alleged by the claimant.

2. We heard the learned counsel for the appellant and the learned Senior Counsel for the Insurance Company Sri.George Cherian.

3. Before the Tribunal, the claimant had produced Exts.A1 to A12 which includes copy of the FIR Ext.A1, copy of the scene mahazar Ext.A2 and copy of the charge sheet Ext.A3, treatment records and disability certificate.

4. The Tribunal framed three points and on point No.1 entered certain findings against the appellant. It is submitted by the learned counsel for the appellant that when Police charge is there it is

prima facie sufficient evidence to prove negligence in the light of the judgment of this Court in **New India Assurance Co. Ltd. v. Pazhaniammal (2011 (3) KLT 648)**. But the Tribunal overlooked the above dictum to find that there is no evidence on record. It would go show that the accident occurred on account of the rashness and negligence on the part of any one other than the claimant himself. One another circumstance relied on by the Tribunal is that the vehicle was not inspected and the AMVI report is not seen put on record. On a reference to Ext.A3 it can be seen that the Police have detailed various steps taken for investigation. If at all the Tribunal wanted to verify the relevant documents, those could have been called for or an opportunity should have been granted to the appellant. The charge sheet will show that the vehicle was inspected and all the documents relating to the vehicle have been verified by the Police also. Therefore, according to us, the claimant could not have been blamed for not producing them. It is pointed out by the learned counsel for the appellant that the Tribunal found fault with for not impleading the rider of the motor cycle and had

observed that it is doubtful whether a 68 year old man could have driven the motor cycle in the early hours of the day. On this premise, it is stated that the occurrence of the accident is doubtful. According to us, in the light of the Police charge, none of those aspects could have been observed like this and if at all it was required to examine the rider, even though he was not a necessary party in the case, there should have been a request by the respondents also. Therefore, we cannot endorse the finding on point No.1 and we set aside the same.

5. As regards point No.2, we find that all the documents have been made available by the claimant. The Tribunal has not assessed the quantum. The learned counsel for the appellant submits that all the available documents have been produced in evidence. We set aside the finding on point No.2 also and remand the matter for fresh consideration. If any oral or documentary evidence is to be adduced by any of the parties, they will make a request to the Tribunal to permit it and an opportunity will be allowed by the Tribunal. Accordingly, the judgment is set aside and the matter is remitted back for fresh

consideration. The parties will appear before the Tribunal on 19.10.2015. Every effort will be taken by the Tribunal to dispose of the matter within a period of six months. Registry will send back the records forthwith.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.