

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 MARCH 2015/18TH PHALGUNA, 1936

MACA.No. 395 of 2009 ()

AGAINST THE AWARD IN OPMV 351/2006 of M.A.C.T OTTAPPALAM
DATED 17-10-2008

APPELLANT/PETITIONER:

MANOJKUMAR, S/O.DAMODARAN NAIR,
URATH THEKKEPAT HOUSE, PURAMATHILSSERY, KUMBIDI P.O.
ANAKKARA VILLAGE, OTTAPALAM, TALUK
PALAKKAD DISTRICT, KERALA.

BY ADV. SRI.P.K.MOHANAN (PALAKKAD)

RESPONDENT(S) /RESPONDENTS:

1. V.V.PUSHKARAN, S/O.VELAYUDHAN,
VARIYATH VALAPPIL HOUSE, PADINJARANGADI P.O.
OTTAPALAM TALUK, PALAKKAD DISTRICT.

2. U.MOHAMMED, S/O.VEERAN,
UPPUKUTTUNGAL HOUSE, VATTAMKULAM, EDAPPAL
MALAPPURAM DISTRICT.

3. NEW INDIA ASSURANCE COMPANY LTD.,
BRANCH OFFICE, TIRUR, MALAPPURAM DISTRICT.

R, R3 BY ADV. SRI.M.JACOB MURICKAN
ADV. A.K.RAMACHANDRAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.395 of 2009

Dated this the 9th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant before the Motor Accident Claims Tribunal, Ottappalam, aggrieved by the dismissal of the application, after finding that the accident happened due to the negligence of the appellant himself.

2. We heard the learned counsel Sri P.K.Mohanan for the appellant and Sri Jacob Murickan, the learned counsel for the Insurance Company.

3. The essential details show the following: The accident occurred on 05.08.2005 at about 12 noon near Kavilpadi bus stop in Trithala-Pattambi public road. He was riding his motor cycle through the western side of the road. The offending vehicle is a bus bearing Reg.No.KL10U-142, which, according to the appellant, hit the motor cycle and he sustained severe injuries. He was taken to the Nila Hospital, Pattambi and thereafter to West Fort Hi-Tech Hospital, Thrissur. The total period of inpatient treatment is 19 days.

4. Before the Tribunal Exts.A1 to A13 documents have been produced including the police records - Ext.A1 copy of the F.I.R, Ext.A2 copy of charge sheet and Ext.A3 scene mahazar.

5. The learned counsel for the appellant submitted that since the driver of the offending vehicle has been charged by the police in Crime No.217 of 2005 under Sections 279 and 338 I.P.C, the same proves prima facie negligence on the part of the driver of the offending vehicle in the light of the decisionS of this Court and the Apex Court. Further it is submitted by referring to the judgment of the Judicial First Class Magistrate Court, Pattambi in C.C.No.421 of 2005 - a certified copy of which was placed before us for our perusal - that the accused pleaded guilty and accordingly he was convicted also.

6. We find from the discussion of the contents of the scene mahazar that the Tribunal was of the view that going by the same, the tarred road at the spot of accident is having a width of 5 metres and the spot of the accident is on the northern side of the road, ie. exactly 3.5 meters towards north from the southern tarred end. The bus was proceeding from west to east and hit on the motor cycle ridden by the appellant, which was coming from the opposite direction. Therefore it was concluded

that the proper side of the bus is on the northern side of the road and that of the motor cycle is southern side and therefore the motor cycle had crossed the midline for about one metre. It is also stated that PW1 had not disputed the police records.

7. The learned counsel for the appellant has placed reliance heavily on a decision of the Apex Court in **Jiju Kuruvila v. Oriental Insurance Co. Ltd.** [2013(3) KLT 261(SC)] to contend that, to prove negligence on the part of any person, the position of the vehicles after accident as shown in a scene mahazar cannot give substantial proof. In para.24 of the **Jiju Kuruvila v. Oriental Insurance Co. Ltd.** (supra), the Apex Court has held as follows:

“The mere position of the vehicles after accident, as shown in Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc., from the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any

direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

Going by the same, in the absence of any direct or corroborative evidence, no conclusion can be arrived at as regards the negligence on the part of any individual. That was also a case of contributory negligence. Herein we have gone through the deposition of PW1 also. In the cross examination he had stated that matters shown in the police records are correct, and this portion was also relied upon against the appellant. But it appears that the question therein was of a general nature and not specifically concerned with any items referred to in the scene mahazar.

8. It is seen that there was no independent or corroborative evidence to show the contributory negligence on the part of the appellant. The matter is therefore squarely covered by the decision of the Apex Court in **Jiju Kuruvila v. Oriental Insurance Co. Ltd.** (supra), in favour of the appellant.

9. Therefore, the finding that the appellant was

negligent in driving the vehicle is vacated especially in the light of the judgment of the Criminal Court in C.C.No.421 of 2005 which was preceded by the charge Ext.A2. The driver of the bus alone was negligent. This point is found in favour of the appellant.

10. As regards the quantum of compensation, no evaluation was made by the Tribunal. Therefore it is necessary to send back the matter to the M.A.C.T, Ottappalam for fixing the amount of compensation. After assessing various aspects and the evidence with regard to the period of treatment and the expenses incurred including medical expenses and other claims, the amount of compensation will be determined.

The parties will appear before the M.A.C.T, Ottappalam on 06.04.2015.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge