

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937**

**MACA.No. 215 of 2010 (C)**  
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**O.P.(MV) No.11/2006 of M.A.C.T.,KOZHIKODE DATED 07-05-2009**

**APPELLANT(S)/PETITIONER:**  
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**JAYACHANDRAN @ CHANDRAN,  
S/O. KUNHIKRISHAN MARAR, AGED 58 YEARS, ANCHUKANDATHIL,  
CHEMMATTUVEEDU, P.O.KAYANNA, VIA PERAMBRA,  
KOZHIKODE, (NOW RESIDING AT KEEZHAVANAPADAM,  
P.O.NALLALAM, CALICUT).**

**BY ADVS. SRI. K.M. JAMALUDHEEN  
SMT.LATHA PRABHAKARAN**

**RESPONDENT(S):**  
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- 1. UNNI, VAZHAYIL VALAPPIL,  
KODERICHALIL, P.O.MENHANIAM, PERAMBRA,  
KOZHIKODE.**
- 2. UNITED INDIA INSURANCE CO. LTD.,  
BRANCH OFFICE, P.B.NO.17, KALLINGAL BUILDING,  
MAIN ROAD, BADAGARA.**

**R2 BY ADV. SRI.M.HARISHARMA**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON  
20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**P.B.SURESH KUMAR, J.**

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**M.A.C.A. No. 215 of 2010**  
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**Dated this the 20<sup>th</sup> day of August, 2015**

**J U D G M E N T**

The claimant in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the dismissal of the claim petition by the Tribunal.

2. The claim petition was filed alleging that the claimant sustained injuries in the accident took place on 06.12.2005 while travelling in an auto rickshaw owned and driven by the first respondent. It is stated in the claim petition that the first respondent was driving the auto rickshaw in which the claimant was travelling in a rash and negligent manner and as a result of the same, the vehicle overturned at the place called Karikandampara and the claimant sustained injuries thereby. The first respondent did not contest the application. The 2<sup>nd</sup> respondent, the insurer of the vehicle involved in the accident contested the claim petition contending that the claimant had not sustained any injuries in the accident. The

Tribunal dismissed the claim petition holding that the claimant failed to prove his case in the claim petition. The claimant is aggrieved by the said decision of the Tribunal.

3. Heard the learned counsel for the claimant and also the learned counsel for the insurer of the vehicle.

4. As noticed above, the specific case of the claimant is that he was travelling in the auto rickshaw owned and driven by the first respondent at the time of accident and he sustained injury on account of the overturning of the Auto rickshaw at the place called Karikandanpara. It is also the case of the claimant that the accident occurred on account of the rash and negligent driving of the first respondent. The fact that the accident took place as alleged by the claimant is not disputed by the insurer of the vehicle. Their contention is only that the claimant has not sustained any injuries in the accident.

5. A perusal of the impugned award indicates that the Tribunal has chosen to dismiss the claim petition for two reasons. One of the reason is that it is stated in Ext.A2 wound certificate produced by the claimant that the claimant was hit

by an auto rickshaw and the said statement in Ext.A2 regarding the cause of accident is not consistent with the case of the claimant in the claim petition. The other reason is that though the accident took place on 06.12.2005, the crime was seen registered only on 11.12.2015. The said reasons according to me, are not sufficient to hold that the case set up by the claimant in the claim petition is incorrect. Ext.A4 is the final report in the case registered in connection with the accident. In Ext.A4 final report, the investigation officer, after due investigation, came to the conclusion that the accident had occurred as alleged by the claimant in the claim petition. The conclusion arrived at by the Investigating Officer in Ext.A4 final report has not been discredited by the second respondent by examining the Investigating Officer. In the aforesaid circumstances, the impugned award is liable to be interfered with.

6. In so far as the quantum of compensation due to the claimant has not been determined by the Tribunal in the award impugned in the appeal, I deem it appropriate to remit the

claim petition for fresh decision by the Tribunal.

In the result, the appeal is allowed, the impugned award is set aside and O.P.(MV) No.11/2006 is remitted to the Principal Motor Accident Claims Tribunal, Kozhikode for fresh disposal. Since the claim petition was filed in the year 2006, I deem it appropriate to direct the Tribunal to dispose the claim petition within a period of six months from today. The parties are directed to appear before the Tribunal on 08.10.2015.

Sd/-  
**P.B.SURESH KUMAR, JUDGE.**

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