

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

MACA.No. 874 of 2014 ()

AGAINST THE AWARD IN OP(MV) 307/2010 MACT, KALPETTA DATED 28-11-2013

APPELLANT(S)/RESPONDENT NO.1:

V.S.SUDHEESH, AGED 35 YEARS,
S/O. SREEDHARAN, VATTAKKAVIL HOUSE, KOLERY.P.O
KENICHIRA, WAYANAD DISTRICT, KERALA.

BY ADVS.SRI.B.V.JOY SANKER
SRI.MATHEWS JOSEPH

RESPONDENT(S)/PETITIONER IN OPMV & RESPONDENT 2 TO 4:

1. SUMESH.V.K., AGED 28 YEARS
S/O. CHANDRAN NAIR, SUMALAYAM, THARUVANA.P.O
MANANTHAVADY, WAYANAD DIST.

2. UNITED INDIA INSURANCE COMPANY IMITED,
KALPETTA, WAYANAD DIST.

3. LUCKMAN, AGED 35 YEARS,
S/O. AYSHA, ANIKKOTT HOUSE, OMASERRY
KODUVALLY, KOZHIKODE DIST.

4. MATHAI.A.P.
ATHIRAMPUZHAYIL HOUSE, MEENNGADI.P.O., CHEERAKKUNNU
KRISHNAGIRI, WAYANAD DIST.

R1 BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.
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M.A.C.A.No.874 of 2014
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Dated this the 3rd day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the first respondent in O.P.(M.V.)No.307 of 2010 on the file of the Motor Accidents Claims Tribunal, Wayanad. The first respondent is the claimant and respondents 2, 3 and 4 are respondents 2, 3 and 4 respectively therein. By award passed on 28.11.2013, the Motor Accidents Claims Tribunal awarded the sum of Rs.4,29,628/- as compensation to the first respondent/claimant and directed the second respondent insurer to deposit the said amount together with interest at 7.5% per annum and proportionate costs. The Tribunal also allowed the second respondent insurer to recover the amount thus paid by it from the appellant, the insured, without further notice on the ground that the motor bike involved in the accident was driven by Ryju Mathew, the son of the fourth respondent who did not at the relevant time possess a driving licence to drive any kind of motor vehicle. The appellant has, aggrieved thereby, filed this appeal.

2. The first respondent/claimant instituted O.P.(M.V.)No.307 of 2010 before the Motor Accidents Claims Tribunal, Wayanad at Kalpetta on 21.7.2010 claiming compensation for the injuries sustained by him

in a motor accident that took place at about 11.30 p.m. on 5.11.2009. He contended that while he was travelling as a pillion rider on the motor bike bearing registration No.KL-12/C-1104 belonging to the appellant late Ryju Mathew who was driving the motor bike in a rash and negligent manner, lost control and the motor bike capsized and in that accident he sustained serious injuries. The claimant was initially taken to Leo Hospital, Kalpetta and later referred to Medical College Hospital, Kozhikode where he underwent treatment till 7.11.2009. Thereafter he was admitted as an inpatient at Baby Memorial Hospital, Kozhikode on 7.11.2009 and discharged on 10.11.2009. He contended that even after discharge he is continuing treatment for the injuries sustained by him. He contended that the accident took place solely on account of the rash and negligent driving of the motor bike by late Ryju Mathew, who succumbed to the injuries sustained by him in the same accident.

3. Upon receipt of notice, the appellant entered appearance and filed a written statement wherein he admitted the fact that he is the owner of the motor bike involved in the accident. He contended that he is working as a teacher in the B.Ed. Centre at Kaniyambatta, that there was a celebration in the college on 4.11.2009 and that without his knowledge, the motor bike which was parked in the premises of the college was taken away by someone and therefore, he cannot be held liable to pay compensation. The second respondent insurer entered

appearance and filed a written statement contending that the person who was driving the motor bike did not possess a valid driving licence. The second respondent also contended that though the motor bike involved in the accident was covered by a valid policy of insurance issued by it, for the reason that it was driven by a person who did not possess a licence, it is not liable to indemnify the insurer. The insurer also contended that the compensation claimed is excessive.

4. After the written statement was filed, the appellant filed I.A.No.2704 of 2012 on 4.9.2012 praying for the impleadment of respondents 3 and 4 herein as respondents 3 and 4 in O.P.(M.V.) No.307 of 2010. The said application was allowed and respondents 3 and 4 herein were impleaded as supplemental respondents 3 and 4 in O.P.(M.V.)No.307 of 2010. In the affidavit filed in support of I.A.No.2704 of 2012 the appellant contended that the third respondent (Luckman) was driving the motor bike at the relevant time. The fourth respondent was impleaded on the averment that he is the father of deceased Ryju Mathew, who according to the claimant was driving the motor bike at the time of the accident. Though respondents 3 and 4 were impleaded, the third respondent did not enter appearance or file a written statement. The supplemental fourth respondent entered appearance and contended that he is not a necessary party. He also denied the averment in the claim petition that his son, late Ryju Mathew was driving the motor bike at the relevant time. He contended

that he cannot therefore be held liable to pay compensation. Before the Motor Accidents Claims Tribunal, the claimant examined himself as PW1, another witness as PW2 and produced and marked Exts.A1 to A11. The disability certificate issued by the District Medical Board, Mananthavady was produced and marked as Ext.C1.

5. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the rash and negligent driving of the motor bike by late Ryju Mathew. The contention of the appellant that it was the third respondent who was driving the motor bike at the relevant time was not accepted mainly for the reason that in the written statement filed by the first respondent he had no case that the vehicle was driven by the third respondent. The Tribunal also took note of the fact that the appellant who was examined as RW1 had no direct knowledge as regards the person who had driven the motor bike at the relevant time. The Motor Accidents Claims Tribunal also awarded a total sum of Rs.4,29,628/- as compensation under various heads including compensation for permanent disability which had been assessed at 30% by a duly constituted medical board. The appellant has filed this appeal mainly for the reason that the insurer has been permitted to recover the compensation awarded by the Tribunal after payment, from him.

6. We heard Sri.B.V.Joy Sankar, learned counsel appearing for

the appellant. The learned counsel appearing for the appellant contended that at the relevant time, the motor bike was driven by the third respondent who possessed a valid driving licence, that the third respondent who was impleaded by order passed on 19.9.2012 on I.A.No.2704 of 2012 has not entered appearance and disputed the said statement and therefore, the Motor Accidents Claims Tribunal erred in holding that late Ryju Mathew was driving the motor bike at the relevant time. The learned counsel also submitted that the compensation awarded under the head loss of disability is exorbitant and excessive.

7. We have considered the submissions made at the Bar by learned counsel appearing for the appellant. We have also gone through the pleadings and the materials on record. The claimant had in the claim petition averred that late Ryju Mathew was riding the motor bike and that he was a pillion rider. Ryju Mathew died on 5.11.2009 the day on which the accident took place. Though the appellant had entered appearance and filed a written statement, he did not put forward the plea that it was not Ryju Mathew who was driving the motor bike. He had no case therein that the additional third respondent who was later impleaded was driving the motor bike. He had also no case that the claimant himself was driving the motor bike. It was only long after the written statement was filed that he came forward with I.A.No.2704 of 2012 seeking impleadment of the

additional third respondent on the averment that the additional third respondent was driving the motor bike. Though the additional fourth respondent supported the plea of the appellant, the third respondent did not enter appearance and support the appellant's case. The appellant did not also take steps to summon and examine the additional third respondent. A reading of the impugned award discloses that the Motor Accidents Claims Tribunal has elaborately considered the rival contentions and held relying on the charge sheet laid by the Police which implicated the deceased Ryju Mathew that the accident took place when Ryju Mathew lost control of the motor bike and it hit against an electricity post by the side of the road. The Motor Accidents Claims Tribunal also took note of the fact that the Assistant Motor Vehicle Inspector has in Ext.A3 report stated that the motor bike did not have any mechanical defects. The appellant has no case that the charge sheet is collusive. There was no material before the Tribunal to show that anyone other than deceased Ryju Mathew was driving the motor bike. The appellant had no case that three persons were travelling on the bike and the additional third respondent was driving the motor bike. He had also no case that the deceased himself was driving the motor bike. In such circumstances, the finding entered by the Tribunal that the deceased Ryju Mathew was driving the motor bike and that the accident took place when he lost control of the bike and it hit against an electricity post by the road side, cannot be said to

be perverse, warranting interference in appeal. We accordingly affirm the finding on negligence entered by the Motor Accidents Claims Tribunal.

8. That takes us to the question whether the compensation awarded is exorbitant or excessive. The claimant had undergone treatment as an inpatient for a total period of 34 days. He had also suffered extensive injuries. Paragraph 24 of the impugned award discloses that the Tribunal has awarded to the first respondent/claimant who was a teacher in a parallel college only Rs.15,000/- towards loss of earnings for a period of three months, besides Rs.30,000/- towards pain and suffering. The Motor Accidents Claims Tribunal has also awarded the sum of Rs.5,000/- towards compensation for loss of amenities, Rs.30,000/- towards pain and suffering and Rs.5,100/- towards bystander's expenses. Having regard to the nature of the injuries and the period of hospitalisation, the amount awarded under these heads cannot be said to be exorbitant. Likewise, reimbursement of the sum of Rs.62,028/- towards medical expenses cannot also be objected to. Having regard to the percentage of disability, the compensation awarded for permanent disability cannot also be said to be on the higher side. The appellant has no case that the multiplier adopted is erroneous or that the claimant was not a teacher by profession or that the sum of Rs.5,000/- which was taken as the monthly income of the claimant, who was admittedly working as

a teacher is on the higher side. The appellant has also no case that the claimant has not suffered any disability. We therefore find no good grounds to interfere with the quantum of compensation awarded by the Tribunal.

9. There is also yet another reason why this appeal cannot be entertained. The first proviso to sub-section (1) of section 173 of the Motor Vehicles Act, 1988 stipulates that no appeal by any person who is required to pay any amount in terms of the award passed by the Motor Accidents Claims Tribunal shall be entertained by the High Court unless he has deposited with it 25,000/- Rupees or 50% of the amount so awarded, whichever is less, in the manner directed by it. A Full Bench of this court has in **Pareeth v. Janaiya** [2014 (4) KLT 506] considered the question whether even in cases where the insurer has been directed to pay the amount awarded as compensation but is permitted to recover it from the insured, the owner/driver are required to make the pre-deposit. It was held that even if there is a direction to the insurer to pay the amount awarded and to recover it from the owner, the owner will come within the meaning of the term person who is required to pay any amount in terms of the award and that he cannot bank upon the deposit made by the insurer for payment, to escape from the rigour of the first proviso to sub-section (1) of section 173 of the Motor Vehicles Act, 1988. The Full Bench held that the direction by the Tribunal to the insurer to pay the amount to the victim

is only to advance the object and purpose of the Act namely to benefit the victim and the owner and the driver cannot take advantage of the same. In the light of the binding decision of the Full Bench of this court as the appellant has not deposited the sum of Rs.25,000/-, the appeal is liable to be rejected for non-compliance with the first proviso to sub-section (1) of section 173 of the Motor Vehicles Act, 1988.

We accordingly hold that there is no merit in the instant appeal. The appeal fails and it is accordingly dismissed. No costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANU SIVARAMAN
JUDGE**

/true copy/

P.A. To Judge

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