

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

MACA.No. 1956 of 2013 ()

AGAINST THE AWARD IN OPMV 1466/2012 of M.A.C.T.,ATTINGAL DATED 24-06-2013

APPELLANT(S)/APPLICANT:

MOHAMMED BASHEER

S/O. MOHAMMED KANNU, RESIDING AT T.C. 49/1129, JABEL
NEAR MANACAUD VALIYAPALLI, MANACAUD VILLAGE
KALIPPANKULAM WARD, THIRUVANANTHAPURAM.

BY ADVS.SRI.GOPAKUMAR R.THALIYAL
SRI.A.CHANDRA BABU

RESPONDENT(S)/RESPONDENTS:

1. SUBIAH KHAN
S/O. AHAMMED PILLAI, KUNNATHU VILAKATHU VEEDU
CHEMPAZHANTHI P.O., THIRUVANANTHAPURAM, PIN-69015

2. MANOJ M.R.
S/O. MOHANAN NAIR, KUZHIVILA PUTHEN VEEDU, AYANICADU
KARAKULAM P.O., NEDUMANGAD TALUK
THIRUVANANTHAPURAM DISTRICT, PIN-695009.

3. THE DIVISIONAL MANAGER
M/S. UNTIED INDIA INSURANCE COMPANY LIMITED
MICRO OFFICE, BISMI BUILDING
OPPOSITE C.S.I. MISSION HOSPITAL, KAZHAKKUTTAM P.O.
THIRUVANANTHAPURAM, PIN-695017.

R3 BY ADV. SRI.P.MURALEEDHARAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1956 of 2013

Dated this the 29th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant before this Court is the claimant before the Motor Accidents Claims Tribunal, Attingal in O.P.(MV) No.1466/2012. He sustained injuries in an accident which occurred on 1.1.2009. He was allegedly knocked down by a tata indica car bearing registration NO.KL-01/AF-2078. The accident occurred in Vellayambalam - Museum public road near Trivandrum Corporation Office and Museum. He was crossing the road and along with him one of his friends was also there. The claimant was knocked down by the offending car. Before the Tribunal, evidence was let in by the appellant. Exts.A1 to A20 documents have been produced and P.W.1, the doctor of KIMS Hospital, Trivandrum has been examined. In spite of the evidence adduced by the claimant, the Tribunal rejected the

application. No evidence, oral or documentary, was adduced by the Insurance Company.

2. Learned counsel for the appellant submitted that there was no dispute by any of the respondents regarding the occurrence of the accident and the injuries sustained by the appellant. It is submitted that the Tribunal has travelled beyond the point and entered into certain conclusions which are not supported by evidence and are against the true facts also. It is submitted that the assumptions and presumptions made by the Tribunal are not supported by any evidence in this case. Ultimately, the Tribunal rejected the claim in spite of the fact that the appellant had adduced evidence to show the details of the accident, the details concerning the criminal case registered in the matter, the details of injuries sustained, treatment and other factors. It is submitted that none of the conclusions and findings in the award could be supported legally.

3. We heard learned counsel for the third respondents also. Respondents 1 and 2 even though accepted notice, there is no

appearance.

4. Ext.A1 is the FIR and the same is dated 5.1.2009 whereby Crime No.57/2009 under Sections 279, 337 and 338 I.P.C. And Section 134 (a+b) of the Motor Vehicles Act, 1988 has been registered against the driver of the offending vehicle. In paragraph 5 of the award, the Tribunal observed that “even though the crime is registered on 5.1.2009, Ext.A2 F.I. Statement by Shri Sadiq is seen laid on 6.9.2009.” We find from the certified copies of documents placed for perusal by the learned counsel for the appellant that the crime was registered on 5.1.2009 and the F.I. Statement is also recorded on the same day. Therefore, obviously the Tribunal has made a mistake about the same. This was influenced the Tribunal to accuse the appellant of having reported the matter to the Police long after the accident had occurred. In fact, Ext.A3 scene mahazar is also drawn at 11.45 a.m. on 5.1.2009, whereas the Tribunal has wrongly reckoned the date as 11.5.2009.

5. The driving licence of the driver, viz. the second respondent

before the Tribunal was produced as Ext.A7. In spite of the fact that he is having a valid driving licence, the Tribunal went on to consider whether he could have obtained the licence on the plea that he had completed 8 months only after becoming a major. Therefore, the Tribunal observed that it is highly doubtful as to whether Ext.A7 is a genuine one. We are at a loss to understand as to how such a presumption can be made when the document itself is before the Tribunal and nobody has dispute about the validity of the driving licence. Herein, the insurance policy is also admitted.

6. The Tribunal also assumed that since the offending vehicle hit the injured, normally the damage, if any, to the vehicle could have been caused to the front portion whereas in this case going by Ext.A9 report the damage is sustained on the rear left wheel side hi-bow of the vehicle and rear-left door is dented and scratched. It is a matter of common knowledge that there is no set pattern for a vehicle to hit a pedestrian and nobody can assume that it will be a head on collision at every time. In that view of the matter, we are at a loss to understand as

to how the Tribunal could have assumed that since the damage is seen on the rear side of the vehicle the accident could not have happened, as described.

7. The Tribunal, in paragraph 6, has stated that though he was admitted and treated in KIMS Hospital, he was not seen subjected to X-ray examination immediately and scanning was also not done immediately. According to the Tribunal, any patient who has sustained injuries, viz. head injuries will be subjected to X-ray or scanning especially in a private hospital like KIMS Hospital, at once. Learned counsel for the appellant explained that the appellant had produced Exts.A13, A14 and A18 scan reports of various dates. It is also submitted that the evidence of the Doctor himself was available before the Tribunal and as far as the treatment and the procedures undertaken by the hospital, there was no challenge in the cross examination when P.W.1 was examined. Therefore, it is submitted that the observations made by the Tribunal are beyond the point. We also find that the discharge summary has been produced as Ext.A11. It records that a

severe head injury had occasioned to the claimant with the fracture neck of right scapular and anterior wedge fracture D12. We find that everyone of the details of investigation have been recorded in the discharge summary also.

8. Therefore, the assumption made by the Tribunal that the story of the accident cannot be believed and that the second respondent cannot be found to have been negligent, cannot be sustained. We vacate the finding on this aspect.

9. It is also the finding of the Tribunal in paragraph 7 that the case of the applicant that he had sustained head injuries cannot be believed, for not subjecting him to scanning immediately and be treated in the Neuro Surgery department. As far as this aspect is concerned, when the evidence of the Doctor is available before the Tribunal along with Ext.A11 and other documents, those items of evidence should have been discussed to find out the details of injuries, the period of treatment, disability, if any, and other factors. Therefore, the assumption that he had not sustained grievous head injuries, that

also on the plea that he was not immediately treated in the neuro surgery department, is without any basis. It is for the Doctors of the hospital to treat him to the department concerned, assess the details of injuries and to prescribe the treatment. The Tribunal cannot assume, that such and such procedures should have been taken by the Doctor, since it is actually a concern of the Doctor and the Hospital.

10. In that view of the matter, we find that none of the findings rendered by the Tribunal on the merits of the matter can be sustained. Ultimately, the finding is that there is nothing on record to show that he had sustained serious injuries in the accident of the nature cited in the petition. As rightly pointed out by the learned counsel for the appellant, without a discussion of the evidence including that of the Doctor, such a conclusion ought not have been arrived at by the Tribunal.

11. Therefore, the award is set aside. The matter is remanded back to the Tribunal for fresh consideration. This is so, especially since the Tribunal has not recorded anything on the quantum of

compensation. The parties are at liberty to adduce evidence, if any, if they so choose.

The parties will appear before the Tribunal on 25.2.2015. Every effort will be taken by the Tribunal to dispose of the matter expeditiously, at any rate, within a further period of three months. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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