

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 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

MACA.No. 553 of 2010 ()

AGAINST THE AWARD IN OPMV 967/2005 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, OTTAPPALAM DATED 20-10-2009

APPELLANT/PETITIONER:

SIVADAS @ SIVADASAN, S/O.PONNUCHAMI,
KIZHAKKEMURI, KANJIKKODE, PALAKKAD.

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

RESPONDENTS/RESPONDENTS:

1. MR.RADHAKRISHNAN, S/O.KUNJUKUTTY,
ADUPPUKALAM, MENON PARA, PALAKKAD
(OWNER OF MOTOR CYCLE KL-01/T-7856).

2. SURESHKUMAR, S/O.DANDAPANI,
K.PUDUR, KANJIKKODE, PALAKKAD
(DRIVER OF MOTOR CYCLE KL-01/T-7856).

3. NATIONAL INSURANCE CO.LTD.,
EAST FORT BUILDINGS, CHITTUR ROAD, PALAKKAD.

4. GIROY THOMAS, S/O.THOMAS,
MADASSERY VEEDU, ANGAMALI, MOOPPENUR VILLAGE
ALUVA.

5. NATIONAL INSURANCE CO.LTD.,
PALAKKAD (INSURER OF HR 26 J 9548- MOTOR CYCLE).

R3&R5 BY ADV. SRI.E.M.JOSEPH

R4 BY ADV. SRI.P.MARTIN JOSE

BY ADV. ELDHO CHERIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A No.553 of 2010

Dated this the 8th day of January 2015

JUDGMENT

Asha, J.,

The appellant is the injured in a motor accident which occurred on 13.2.2005. The appellant was travelling in a motor cycle bearing Registration No. KL-10/T-7856 as a pillion rider which was hit against another motor cycle and he sustained injuries. The claim petition was filed seeking compensation to the tune of Rs. 5 lakh. Originally, the petition was filed under Section 166 of the Motor Vehicles Act claiming compensation from respondents 1 to 3 who are the owner, rider and insurer of the vehicle in which the petitioner was travelling as a pillion rider. Thereafter, the petition was amended seeking compensation under Section 163-A of the Motor Vehicles Act.

2. The Tribunal considered the maintainability of the petition under Section 163-A. Ext.A20 certified that the appellant had 15% disability. But the Medical Board certified

that there was no permanent disability. On this ground as well as on the ground that the income of the appellant exceeded Rs. 40,000/-, the Tribunal found that the appellant was not entitled to claim compensation under Section 163 A. In the circumstances, the claim petition was dismissed.

3. This appeal is filed challenging the award of the Tribunal. Based on the direction issued by this Court, in the order dated 4.9.2013 in I.A. No. 2375/2013, the appellant was examined by the Special Medical Board and the Superintendent of Medical College, Thrissur furnished the report, showing the disability of the appellant as 5%.

4. Learned counsel for the appellant submitted that the Tribunal has not considered the claim petition under Section 166 of the Motor Vehicles Act which is vehemently opposed by the learned counsel for the Insurance Company.

5. Having regard to the fact that the appellant is found to have permanent disability of 5%, we find that this matter is to be re-considered by the Tribunal afresh, since the Tribunal had dismissed the claim petition on the ground that there is no

M.A.C.A No.553 of 2010 :3:

permanent disability.

6. Therefore, we remand the matter for fresh trial by the Tribunal, leaving open all the issues. The parties will be permitted to adduce evidence on all matters, afresh.

The parties will appear before the Tribunal on 18.2.2015.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge