IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.No. 1887 of 2011 ( )

AGAINST THE AWARD IN OPMV 1178/2000 of II ADDL.D.C. & ADDL.MACT, KOLLAM, DATED 20-08-2011

APPELLANT/PETITIONER:-

SATHYADEVAN
S/O.KUMARAN, CHITTAKATTU PADINJATTATHIL
KUNNATHOOR EAST MURI P.O., KUNNATHOOR VILLAGE
KOLLAM DISTRICT.

BY ADVS.SRI.ANCHAL C.VIJAYAN
SMT.MINI.S.DAS

RESPONDENTS/RESPONDENTS:-

1. ASWANIKUMAR AND OTHERS
KUTTIVADAKKATHI, KUNNATHOOR, KOLLAM DISTRICT-690 520.

2. GOPAKUMAR.G., S/O.GOPINATHAN,
GOPU BHAVANAM, PADA NORTH, KARUNAGAPALLY
KOLLAM DISTRICT-691 518.

3. UNITED INDIA INSURANCE COMPANY LIMITED,
KUNDARA, KOLLAM DISTRICT-691 501.

R3 BY ADV. SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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M.A.C.A.No.1887 of 2011.
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Dated this the 6th day of February, 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 decision of the Tribunal.

2. The claimant is a painter by profession. The accident took place on 12.8.2000. The claimant was aged 27 years at the time of accident. He sustained various injuries in the accident including fracture of clavicle. The case set up in the petition for compensation is that the accident occurred while the claimant was riding in the pillion of a motor cycle ridden by the first respondent. The second respondent is the owner of the vehicle involved in the accident and the third respondent is the insurer. A sum of Rs.1,00,000/- was claimed by any of compensation in the petition.

3. The owner and rider of the vehicle remained ex

parte. The insurer of the vehicle contested the application contending that the policy issued to the owner does not take in the risks of the pillion rider.

4. The claimant gave evidence as PW1. Exts.A1 to A7 are the documents produced by him in the case. The Tribunal found that the claimant has not established negligence on the part of the first respondent and consequently dismissed the claim petition. Despite the finding that the claimant has not established negligence on the part of the first respondent, the Tribunal determined the compensation due to the claimant at Rs.35,820/-. It is aggrieved by the said decision of the Tribunal that the claimant has come up in this appeal.

5. Heard the learned counsel for the appellant/claimant and also the learned counsel for the third respondent/insurer.

6. As noticed above, respondents 1 and 2 did not contest the claim petition. The third respondent, the insurer has though filed I.A.1348 of 2002 seeking permission of the Tribunal to contest the claim petition on all grounds, the permission sought for is not seen granted. Nevertheless,

the claimant gave evidence in the petition as PW1. He deposed that the accident occurred on account of the negligence of the first respondent. Without adverting to the fact that the insurer is not entitled to contest the claim petition on the ground that the rider of the motor cycle was not negligent, the Tribunal dismissed the claim petition holding that the claimant has not established that the rider of the motor cycle was negligent in the matter of causing the accident. I am unable to agree with the said decision of the Tribunal. The fact that the claimant was riding on the pillion of the motor cycle involved in the accident is not seen disputed by the insurer. The reasons on the basis of which the Tribunal found that the rider of the motor cycle was not negligent seems to be that in the first information statement given by the claimant to the police in the case registered in connection with the accident, he has stated that the vehicle was being ridden by the first respondent in an ordinary speed and that in the police investigation, it was found that there was no negligence on the part of the rider of the vehicle. I am afraid, those are not reasons sufficient for the Tribunal to come to the conclusion that the accident had not occurred on account of the negligence of the first respondent. Merely because the first respondent was driving the vehicle in an ordinary speed, it cannot be said that he was not negligent. Likewise, the mere fact that the police has not found the first respondent guilty of negligence is also not a ground to hold that the first respondent was not negligent. It is now settled that in a claim petition for compensation before the Motor Accidents Claims Tribunal, the claimant is required to establish the case only on the touchstone of preponderance of probabilities and the standard of proof beyond reasonable doubt shall not be insisted (See Kusum Lata & Ors. v. Satbir & Ors. (2011) 3 SCC 646) and Parameshwari v. Amir Chand & Ors. (2011) 11 SCC 635). On an evaluation the materials on record, applying the principle of preponderance of probabilities, I am convinced that the accident in the instant case had occurred on account of the negligence of the first respondent and I hold so.

7. Coming to the quantum of compensation, Ext.A5 is the wound certificate issued to the claimant from the Taluk Hospital, Sasthamcotta. Ext.A5 indicates that the

claimant sustained the following injuries:

(i) Deformity and swelling right shoulder.

(ii) Haematoma on the right arm.

(iii) Contusion on the right hand.

(iv) Abrasion with swelling right knee and ankle.

(v) Haematoma on the right thigh 10 x 7 cm.

(vi) Fracture clavicle.

Ext.A4 is the discharge card issued to the claimant from the said hospital. Ext.A4 indicates that the claimant was undergoing treatment as inpatient for 40 days. The Tribunal has granted only a sum of Rs.6,000/- to the claimant towards compensation for the loss of earnings for a period of three months reckoning the monthly income of the claimant at Rs.2,000/-. According to me, in so far as the claimant was in the hospital for 40 days, he is entitled to compensation for loss of earnings at least for a period of four months, reckoning his monthly income at Rs.3500/-. If the loss of earnings is worked out in the aforesaid fashion, the claimant will be entitled to further sum of Rs.8,000/- by way of compensation on that head. On an evaluation of the materials on record, the Tribunal has reckoned the percentage of disability of the claimant at 4% and arrived at the compensation payable for loss of earning capacity at Rs.16,320/-, applying the multiplier 17. Since the claimant is a painter, I have no doubt in my mind that the injuries would affect his earning capacity. According to me, the compensation payable for loss of earning capacity shall be computed reckoning the disability at 5%. If the compensation on that head is computed in that fashion, the claimant will be entitled to further sum of Rs.19,380/-. Only a sum of Rs.3,000/- is seen granted to the claimant towards loss of amenities and enjoyments in life. In the nature of injuries sustained by him and the treatment undergone by him, I am of the view that the claimant is entitled to a minimum amount of Rs.10,000/- towards compensation for loss of amenities and enjoyments in life. The claimant is therefore, entitled to a further sum of Rs.7,000/- on this head. Thus, altogether the claimant is entitled to Rs.34,380/- over and above the compensation determined by the Tribunal. The total compensation payable to the claimant, in the circumstances, will be Rs.70,200/-.

8. Even though it was contended in the written statement filed by the insurer that the policy issued by them

does not take in the risks of the pillion rider, the Tribunal found that the policy issued by the third respondent to the owner of the vehicle in the instant case is a package policy covering the pillion rider also. In the light of the said finding, the insurer is liable to indemnify the owner.

9. In the result, the appeal is allowed in part. The appellant is permitted to recover from the third respondent a sum of Rs.70,200/- towards compensation with interest at 9% per annum from the date of accident.

Sd/-
P.B.SURESH KUMAR,
(Judge)

Kvs/-

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PA TO JUDGE.