

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

MACA.No. 1890 of 2011 ()

**AGAINST THE AWARD IN OP(MV) 1047/2008 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL,ERNAKULAM DATED 23-06-2011**

APPELLANT/PETITIONER:

**BIJU P.H., S/O. HANEEF,
ALUVAPARAMBU HOUSE, THANGAL NAGAR, PALLURUTHY P.O.
PALLURUTHY VILLAGE, KOCHI TALUK, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.MATHEWS K.PHILIP
SMT.T.MANASY**

RESPONDENTS/RESPONDENTS:

- 1. SANEER, S/O.K.H.KUNJUMON,
CC-03 1165, EARAVELI KARA, MATTANCHERY P.O.-682 002.**
- 2. SUBAIR H.M., S/O. MUHAMMED, 3/131,
CHAKKARAYIDUKU, KOCHI-682 002.**
- 3. RELIANCE GENERAL INSURANCE CO.LTD.,
XL/3599, VI FLOOR, ELIZABETH ALEXANDER MEMORIAL
BUILDING, SHANMUGHAM ROAD, KOCHI-682 031.**

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.1890 of 2011

Dated this the 13th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

Even though the appellant/claimant filed an application claiming compensation the same was rejected by the Tribunal by finding that an over all assessment of the facts and evidence could not convince the Tribunal that the appellant had sustained injuries in a motor vehicle accident.

2. We heard learned counsel for the appellant and learned counsel for the Insurance Company.

3. The claimant, according to him, was travelling in a two wheeler through the Palluruthy - Panchayat Raj Road on 12.12.2007 around noon. The offending vehicle is also a two wheeler which was coming from the opposite side. The case before the Tribunal that his vehicle was hit by a two wheeler coming from the opposite side and he fell down and sustained fracture third toe right.

4. Exts.A1 to A10 have been produced by the

appellant which includes the records maintained by the police as well as the records from the hospital. He was taken to the Maharajas Hospital, Karuvelipady and thereafter in the Specialist Hospital, Ernakulam.

5. Learned counsel submitted that every one of the documents will justify the claim for compensation. The Tribunal presumes that absence of any damage to the two wheeler arises suspicion, which according to the learned counsel, cannot be a justification to reject other valuable documents like charge sheet Ext.A3, the wound certificate Ext.A2 as well as Ext.A7 discharge summary from the Specialist Hospital.

6. Learned Senior Counsel Sri. George Cherian for the Insurance Company submitted that the findings are perfectly justified. The Tribunal would have felt that the appellant had sustained injuries in a different manner.

7. We find from the records that no oral evidence has been adduced by the appellant even though it is submitted that a proof affidavit was filed, it does not appear

that, the same was acted upon.

8. Learned counsel for the appellant submitted that appellant is prepared to adduce oral evidence and to examine competent witnesses to prove the accident and the treatment.

9. We therefore grant a further opportunity to the appellant to adduce further evidence. Accordingly, the award is set aside and the case is send back to the Tribunal for fresh disposal. Both parties are allowed to adduce oral and documentary evidence.

The parties will appear on 5.10.2015 before the Tribunal.

The registry will send back the records.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/