

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 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

MACA.No. 2272 of 2013 ()

**AGAINST THE AWARD IN OP(MV) 843/2007 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
ATTINGAL DATED 31-05-2013**

APPELLANT/APPLICANT:

**BABY, AGED 26 YEARS
D/O.VALLIAMMAL, NISHA BHAVAN, AVANAVANCHERI
ILAMBA P.O., ATTINGAL.**

**BY ADVS.SRI.R.T.PRADEEP
SRI.J.ROBINSON**

RESPONDENTS/RESPONDENTS:

- 1. ROBINSON
REENA BHAVAN, VELLORKONAM, NEDUMANGADU
THIRUVANANTHAPURAM-695 541.**
- 2. THE DIVISIONAL MANAGER
THE NEW INDIA ASSURANCE CO.LTD., REMA PLAZA
S.S.KOIL ROAD, THAMPANOR, THIRUVANANTHAPURAM-695 001.**

**R2 BY ADV. SRI.M.JACOB MURICKAN
R BY SRI.A.A.ZIYAD RAHMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
20-08-2015, ALONG WITH MACA 2276/2013 & 2290/2013 THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

SHG/

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

M.A.C.A.Nos.2272, 2276 & 2290 of 2013

Dated this the 20th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

All these appeals are filed by the respective claimants before the Motor Accidents Claims Tribunal, Attingal from O.P.(M.V.)Nos.843/2007, 179/2008 & 1613/2007. The three claim petitions were heard together by the Tribunal and therefore we are disposing of the appeals together.

2. As per the pleas raised in the claim petitions, the claimants were travelling in an autorickshaw on the date of the accident. The claimant in O.P.(M.V.)No.1613/2007 was aged 48 years, the claimant in O.P.(M.V.)No.179/2008 was aged 29 years and the claimant in O.P.(M.V.)No.843/2007 was aged 26 years.

3. The accident occurred on 10.9.2007 at 9.30 a.m. while they were travelling along Venjaramoodu-Pothencode public road. The driver, due to the excessive speed lost control and the vehicle capsized. They suffered bodily

injuries and hence claimed compensation. The claimant in O.P.(M.V.)No.843/2007 is the daughter of the claimant in O.P.(M.V.)No.1613/2007.

4. Two points have been considered by the Tribunal and the first one was regarding alleging negligence on the part of the autorickshaw driver.

5. We have heard learned counsel on both sides.

6. The Tribunal's view going by the discussion in paragraph No.1 on point No.1 will show that there is no evidence to show the involvement of the autorickshaw in the accident. Accordingly, the applications have been rejected.

7. Learned counsel for the appellants submitted that police have investigated the case and have filed Ext.A3 charge sheet. In the light of the view taken by this Court in **New India Assurance Co. Ltd. v. Pazhaniammal [2011 (3) KLT 648]** a charge sheet filed by the police is prima facie sufficient evidence to prove negligence on the part of the driver of the offending vehicle and no further evidence was necessary to show the involvement of the vehicle and

the driver. This Court has held therein as follows:

As a general rule it can safely be accepted that production of the police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under S.166 of the Motor Vehicles Act. A system cannot feed itself on a regular diet of distrust of the police. Prima facie, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the indictee. If any one of the parties do not accept such charge sheet, the burden must be on such party to adduce oral evidence.

Therefore, we are not agreeing with the view taken by the Tribunal that the claimants had not adduced sufficient evidence to prove the accident even though the learned counsel for the Insurance Company supported the findings. They have produced the F.I.R Ext.A1, scene mahazar Ext.A2, Ext.A3 charge sheet and Ext.A4 wound certificate. No other evidence to contradict the contents of these documents was there. Therefore we will proceed to consider the claims for compensation. We hold that the driver of the offending vehicle was negligent in causing the accident.

8. As far as the appellant in M.A.C.A.No.2290/2013 is concerned Ext.A4 is the wound certificate issued by the

Medical College Hospital, which shows that there was pain and deformity right leg and foot and fracture right foot P1 to P7 big toe. Of course there is no disability as far as the said claimant is concerned and there is no proof of the same. We therefore fix a reasonable compensation after considering various aspects in the following manner:

Head of claim	Amount awarded Rs.
Transportation	1000
Pain and suffering	20000
Partial loss of earnings	4000
Loss of amenities	5000
Miscellaneous expenses	5000
Total	35000 (Rupees thirty five thousand only)

9. The amount of compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

10. As far as the appellant in MACA 2276/2013 is concerned she has suffered fracture radial head left and Exts.A7 and A8 are produced to prove the same. She was

also put in plaster and there is no disability here. She had suffered pain left elbow and left shoulder and there was fracture radial head scapula.

11. We therefore fix a reasonable compensation of Rs.35,000/- in the following manner:

Head of claim	Amount awarded Rs.
Transportation	1000
Pain and suffering	20000
Partial loss of earnings	4000
Loss of amenities	5000
Miscellaneous expenses	5000
Total	35000 (Rupees thirty five thousand only)

12. The amount of compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

13. As far as MACA 2272/2013 is concerned, the wound certificate Exts.A9 and A10 will show that she had suffered fracture medical condylar and multiple abrasions all over the body and pain all over the body. She was also

subjected to plaster cast. She was aged 26 at the time of the accident.

14. We have considered the rival submissions.

15. The learned counsel for the Insurance Company submitted that there is no disability certificate here.

16. After considering various aspects, we fix a reasonable compensation of Rs.40,000/- as far as the said claimant is concerned in the following manner:

Head of claim	Amount awarded Rs.
Transportation	1000
Pain and suffering	25000
Partial loss of earnings	5000
Loss of amenities partial	6500
Miscellaneous expenses	2500
Total	40000 (Rupees forty thousand only)

17. The amount of compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

18. The Insurance Company has produced Ext.B1

insurance policy. Even though it is contended that the policy was not valid we find from the written statement in O.P.(M.V.)No.1613/2007 in paragraph No.2 that there is an averment to the effect that the existence of the insurance policy on the date of the accident to the autorickshaw bearing registration No.KL-01/J-3828 is admitted. Same is adverted to in paragraph 5 of the award also. Going by the police charge Ext.A3 it can be seen that they verified the insurance certificate and have found that the policy is valid from 29.3.2006 to 28.3.2007 with the New India Assurance Co. Ltd in the name of the insured. No other plea regarding validity of policy was there. The Insurance Company will be therefore liable to satisfy the award. It is also clear that the absence of payment of tax cannot be a valid defence for the Insurance Company and the vehicle was used in a public place as a transport vehicle and the liability will be there. Therefore, we allow the appeals by way of fixing the compensation at the rate of Rs.35,000/- each in MACA Nos.2276/2013 and 2290/2013 and an amount of

Rs.40,000/- in MACA 2272/2013. The owner is vicariously liable and the insurer will be liable to indemnify him.

19. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, before the Tribunal within a period of three months. On such deposit being made, the appellants will be entitled for the release of the amount.

There will be no order as to costs in these appeals.

Sd/-

**T.R. RAMACHANDRAN NAIR
JUDGE**

Sd/-

**K.P. JYOTHINDRANATH
JUDGE**

shg/