

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

MACA.No. 970 of 2009 ()

AGAINST THE AWARD IN OPMV 949/2006 of M.A.C.T.,KOTTAYAM DATED
15-10-2008

APPELLANTS/PETITIONERS:

1. SANTHAPOORNAM
KUNNATHU HOUSE
THURUTHY
CHANGANASSERY
KOTTAYAM
2. ISSAC RESIDING AT DOOR NO.102/60
CHERISTIANPETT, W.PUTHUPPATTI
PIN 626 116

BY ADV. SRI.M.J.THOMAS

RESPONDENTS/RESPONDENTS:

1. SREEKUMAR M.S., MANIMANDIRAM
CHENNANIKKAD, KOTTAYAM
2. THE NATIONAL INSURANCE COMPANY LTD.
KOTTAYAM

R2 BY ADV. SRI.MATHEWS JACOB (SR.)
R2 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.970 OF 2009

Dated this the 27th day of May, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the second claimant against the dismissal order passed in O.P.(MV)No.949/2006 on the file of the Motor Accidents Claims Tribunal, Kottayam. The first petitioner is the original claimant in the above said claim petition.

2. The case of the first petitioner was that while the first petitioner was working as maid servant with a monthly income of ₹4,000/- , she met with a motor vehicle accident on 28.10.2004 at about 10.30 a.m. The case of the first petitioner is that a scooter bearing Reg.No. KL 5/R 4549 ridden negligently by the first respondent hit against the petitioner and in that accident, she sustained grievous injuries. Alleging that the accident occurred due to the rash and negligent riding of the scooter by the first respondent, the claim petition was filed. During the pendency of the above claim petition,

the first claim petitioner died. The second petitioner got impleaded as per order in I.A.No.1040/2008.

3. On the contentions of the parties, the Tribunal framed issues as follows :

1. Has the accident occurred due to negligence of first respondent in riding the scooter as alleged ?
2. Is the claimant entitled to get compensation, if so what is the quantum ?
3. Who is liable to pay the compensation ?

4. After considering issue No.1, the Tribunal came to the conclusion that the accident occurred due to the negligence of the first respondent who was riding the scooter. The Tribunal considered issue Nos. 2 and 3 together. While considering the above said issues, the Tribunal came to the conclusion that the execution of the relied on Will of the first petitioner, who died during the pendency of the petition has not been proved and accordingly dismissed the application.

5. When the appeal came up for hearing, the learned counsel for the appellant submits before us that the above referred Will was

produced along with I.A.No.1040/2008. He sought a further opportunity to adduce evidence to prove his entitlement for award of compensation.

6. In that view of the matter, it will be only just and proper to give an opportunity to the appellants to prove the above referred Will as well as adduce evidence on other aspects. Thus, the impugned award is hereby set aside except as regards the finding on negligence, which we confirm. On all other aspects, the Tribunal is to pass appropriate award.

Accordingly, the appeal allowed, matter is remanded back to the Tribunal for considering the matter in accordance with the directions given above. There will be no order as to costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.