

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. 2350 of 2013 ()

**AGAINST THE AWARD IN OP(MV) 1162/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
ATTINGAL DATED 18-07-2013**

APPELLANT/APPLICANT:

**UPENDRAN, AGED 62 YEARS
S/O.KRISHNAN PANICKER, CHENDUPOOR, VENKODE.P.O.
VATTAPARA.**

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

RESPONDENTS/RESPONDENTS:

**1. ABDUL HAKKIM
UDAYANAPARA PUTHEN VEEDU, NELLANADU.P.O., VENJARAMOODU
THIRUVANANTHAPURAM.695 606.**

**2. THE MANAGER
THE NEW INDIA ASSURANCE CO. LTD.
MUNICIPAL BUS STAND, MAIN ROAD, ATTINGAL.695 101.**

**3. THE MANAGER
UNITED INDIA INSURANCE CO. LTD., MALANKARA BUILDING
V.J.T.HALL ROAD, PALAYAM, THIRUVANANTHAPURAM. 695 001.**

**R2 BY ADVS. SRI.P.K.BABU
SRI.S.P.SURESH KUMAR**

**R3 BY ADV. SMT.DEEPA GEORGE
R BY SRI.JOHN JOSEPH VETTIKAD
R BY SRI.A.A.ZIYAD RAHMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

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

M.A.C.A.No.2350 of 2013

Dated this the 20th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

This appeal is filed by the claimant in O.P.(M.V.) No.1162/2004 on the file of the Motor Accidents Claims Tribunal, Attingal. The appellant was aged 53 years and he sustained injuries in an accident which occurred on 6.7.2004. According to him he was riding a scooter bearing registration No.KET 6926 along Vattappara-Vembayam public road at about 3.45 p.m. a kynetic honda bearing registration No.KL-9829 which was coming from opposite direction strayed to wrong side, and hit against the scooter. He was thrown off his vehicle.

2. Insurance Company contested the claim and evidence was taken by the Tribunal. Exts.A1 to A7 documents were marked on side of the the appellant and Ext.B1 package insurance policy was produced by the

Insurance Company.

3. The learned counsel for the appellant submitted that the very approach made by the Tribunal resulting in denial of compensation to the appellant cannot be sustained. It is submitted that in spite of police charge as against the rider of the offending vehicle the Tribunal refused to believe that the accident occurred as alleged by the appellant. Learned counsel for the appellant in this context relied upon the judgment in **New India Assurance Co. Ltd. v. Pazhaniammal [2011 (3) KLT 648]** to contend that production of police charge prove negligence as against the rider of the offending vehicle.

4. Learned counsel for the Insurance Company supported the award and submitted that the appellant had to prove the accident to the hilt and that he sustained injuries as a result of it.

5. We have gone through Ext.A6 wound certificate which is dated 6.7.2004 and fracture clavicle left has been noticed.

6. As against the column No.15 I.P.No.91739 is marked. The casualty card has also been produced as Ext.A5. The description shows that treatments have been undertaken by him. Ext.A7 is the copy of the disability certificate. The same will show that he had fracture of the left clavicle and was treated conservatively with clavicle brace for about four weeks. The percentage of disability assessed is 5, in view of the fact that fracture of the left clavicle remained malunited with 10 degree anterior and superior angulation and there is partial stiffness of the left shoulder.

7. At the outset we will observe that the Tribunal's view that he was under the influence of alcohol and the accident was caused due to the same cannot be justified. It is not the case of anybody that he was under the influence of alcohol. What is recorded in the causality card is about smelling of alcohol. But the Tribunal came to the conclusion that he was under the influence of alcohol and might have sustained the injuries by falling down somewhere.

8. We are of the view that the respondents have not adduced any evidence to disprove the accident. The final charge was before this Court. If at all any documents had to be summoned from the police that could have been done.

9. On the second point regarding the injury and treatment also the finding of the Tribunal is that the claimant sustained bodily injuries fracture left clavicle not from the accident but could have been caused to him after he had fell down somewhere after getting fully drunk or intoxicated. This observation cannot be sustained at all. The factual aspects had to be analysed by the Tribunal based on the records produced and the observations which are not germane ought to have been avoided also.

10. In that view of the matter we set aside the judgment and vacate all the findings and the case is remanded back for fresh consideration by the Tribunal.

The parties will appear on 15.10.2015. All aspects will be considered afresh. If any of the parties request for a chance for adducing further evidence an opportunity has

also to be granted. All efforts will be taken to dispose of the matter within a period of six months thereafter.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/