

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. 2404 of 2013 ()

**AGAINST THE AWARD IN OP(MV) 1331/2008 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
ATTINGAL DATED 29-07-2013**

APPELLANTS/APPLICANTS:

- 1. OMANA, AGED 44 YEARS
KICHU BHAVAN, SARAVANA JUNCTION
KALLARA P.O. THIRUVANANTHAPURAM.**
- 2. B. VISHNU, AGED 24 YEARS
KICHU BHAVAN, SARAVANA JUNCTION
KALLARA P.O. THIRUVANANTHAPURAM.**
- 3. ASWANI O.B. AGED 19 YEARS
KICHU BHAVAN, SARAVANA JUNCTION
KALLARA P.O. THIRUVANANTHAPURAM.**

BY ADV. SRI.R.T.PRADEEP

RESPONDENTS/RESPONDENTS:

- 1. JAYAKUMAR
H.NO.10/176, SREEKUMAR BUNGALOW
MANGALAPURAM THIRUVANANTHAPURAM 695 001.**
- 2. THE DIVISIONAL MANAGER
THE NEW INDIA ASSURANCE CO.LTD., 2ND FLOOR, REMA PLAZA
S.S.COIL ROAD, THAMPANOOR.695 001**

**R1 BY ADVS. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.
SRI.GOVIND PADMANAABHAN**
**R2 BY ADV. SRI.P.JAYASANKAR
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.2404 of 2013

Dated this the 20th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

The claimants before the Tribunal are the appellants herein. They are the widow and the children of the deceased Babu @ Babu Asari. Claiming Rs.25 lakhs as compensation the application was filed. He sustained injuries in an accident which occurred on 10.10.2008 while travelling as a pillion rider on the motorcycle bearing registration No.KL-22/4934. It was being ridden by one Sundaresn along Menamkulam -Arattuvahi public road, near KINFRA Industrial Company Main Gate the accident occurred at 1 a.m on 10.10.2008. The offending vehicle is a Mahindra Van KL-01/X-8407 which was coming from the opposite direction. As the result of the injuries sustained both the rider and pillion rider died. Before the Tribunal the owner of the Mahindra Van was arrayed as first respondent and the Insurance Company was arrayed as

second respondent. The Insurance Company alone contested the case.

2. On point No.1 namely as regards the negligence and occurrence of the accident the Tribunal entered a finding that the evidence adduced is totally insufficient to probabalise the occurrence of the accident or rather to prove a case that, an accident of the nature ever occurred, whereof either the rider of motorcycle KL-22/4934, or the driver of Mahindra Van KL-01/X-8407 could be found to have been rash and negligent for the occurrence of the accident.

3. The claimants have produced before the Tribunal various documents to prove the accident, the details regarding his income, employment and other details. Ext.A1 is the copy of the FIR in crime No.331/2008 of Kazhakkuttam police station. Ext.A2 is the copy of the scene mahazar. Ext.A3 is the copy of AMVI Report, Ext.A4 is the copy of charge sheet.

4. Heard both sides. Firstly we come to point No.1.

The accident resulted in causing heavy damage to the motorcycle as well as Mahindra Van. The Tribunal was of the view that the exact place of the accident may not be able to be ascertained due to the collision between two moving vehicles. Then the Tribunal went on to consider the damage sustained to the Mahindra Van and found that extensive damage has been caused to the said vehicle. Then the observation made is that all these items of damage may not have been sustained by a hit with a motorcycle, which is a lighter one. It has also been concluded that the motorcycle has also been mangled and even though police has finalised the charge sheet the accident might not have happened in the manner as pleaded. We fail to understand as to how those conclusions could have been arrived at in spite of the evidence adduced by the claimants and there was no counter evidence from the side of the respondents. The Insurance Company had also no contention that the accident is not the one involving the two vehicles namely the Mahindra Van and the motorcycle. The owner of the

Mahindra Van did not contest the matter and did not even file a written statement. In this context, we will refer to the decision reported in **New India Assurance Co. Ltd. v. Pazhaniammal [2011 (3) KLT 648]** regarding the evidentiary value of the charge sheet filed by the police after investigation.

5. We have gone through the charge sheet Ext.A4. It is seen that extensive investigation was made by the police. This Court in the above cited judgment while assessing the importance of the police charge found 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.

If the evidence adduced in this case is tested in the light of the above dictum the only finding that can be entered is that claimants have proved prima facie sufficient negligence on the part of the driver of the Mahindra Van.

6. The learned counsel for the Insurance Company submitted that the said driver has not been impleaded as a party. But in the light of the judgment of this Court in **Anuradha Varma v. State of Kerala [1993 (2) KLT 777]** and a recent decision of this Court in **Oriental Insurance Company Ltd. v. Shobhana Omanakuttan [I.L.R. 2015 (3) Kerala 103]**, in respect of a claim petition it cannot be said that it is not maintainable for not impleading the driver. It was held by this Court that in an application for compensation, driver of the offending vehicle is not a necessary party as driver and owner of the vehicle are joint tortfeasors and action can be maintained against any one of the joint tortfeasors.

7. The view taken by the Tribunal is mainly by referring to the damage sustained to both the vehicles. The gravity of the situation cannot therefore destroy the evidence before the Tribunal by production of the police records by the claimants. The matters on which there was no contest, should have been adverted to on the basis of the

pleadings and evidence. Therefore, we vacate the finding on point No.1 and in the light of the police charge Ext.A4 we find that the driver of the offending vehicle Mahindra Van KL-01/X-8407 was negligent in causing the accident.

8. As far as the quantum of compensation is concerned, learned counsel for the appellants submitted that he was in gulf countries and was doing upholstery works since 18.8.2003 and reliance is placed on Ext.A7 certificate. It is seen that the deceased's passport has also been produced as Ext.A9.

9. Learned counsel for the Insurance Company Sri. Jayasankar submitted that since the Tribunal has not earmarked the compensation it is only proper that the matter is considered by the Tribunal.

10. It is also the submission by the learned counsel for the claimants that he had earned much amount from the engagement in gulf countries and the evidence in that regard will have to be appreciated.

11. We are of the view that as regards the fixation of

compensation is concerned, the matter will have to be send back for consideration afresh since various details will have to be verified and a proper compensation will have to be fixed. In that view of the matter, we set aside the finding regarding point No.2 and remand the matter for fresh consideration for fixing the amount of compensation. The Tribunal will therefore consider the matter afresh with regard to this point and pass an award accordingly.

The parties will appear on 19.10.2015. If any of the parties requests for adducing oral or documentary evidence the said opportunity will be granted. The Tribunal will take efforts to dispose of the matter finally at least within a period of four months from the said date. We also notice that there is a valid policy and the Company is not disputing the existence of the valid policy.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/