

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

MACA.No. 11 of 2008 ()

AGAINST THE AWARD IN OPMV 1234/2003 of MACT MUVATTUPUZHA
DATED 23-08-2007

APPELLANT/PETITIONER:

P.S.MUHAMMED SADIQUE,
S/O.SAIDU MUHAMMED, PUTHUSSERY HOUSE, KALAMBOOR
ENANELLOR.

BY ADVS.SRI.C.DILIP
SRI.SAJU.S.A

RESPONDENT(S):RESPONDENTS

1. M.RATHINASWAMY, S/O.MUTHUSWAMY,
21/684, THONDIKULAM, NURANI P.O.
PALAKKAD, PIN-678 004.

2. SANKARA LINGAM, S/O.KARAPPASAMY NADAR,
11/124, NORTH DEVATHARAM P.O., RAJAPALAYAM
PIN-626 117.

3. M/S.UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, 4/23G, NEW IDAPPADI ROAD
SANKARI, SALEM DISTRICT, TAMIL NADU
PIN-637 301.

R,R3 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 19-03-2015, ALONG WITH MACA. 13/2008, MACA. 14/2008, MACA.
15/2008, MACA. 18/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

M.A.C.A Nos.11, 13, 14, 15 and 18 of 2008

Dated this the 19th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals have been filed by the respective claimants in O.P(MV) Nos.1234/2003, 1505/2003, 1222/2003, 1223/2003 and 1235/2003.

2. We heard the learned counsel on both sides. The award shows that the Tribunal, after relying upon the entries in the scene mahazar, dismissed all the petitions without adjudicating anything on the amount of compensation. The learned counsel for the appellants submitted that the appellants had taken steps to examine the Investigating Officer who had prepared the scene mahazar Ext.A4. The learned counsel for the Insurance Company submitted that if this Court decides to direct a fresh adjudication, the factual and legal issues may be left open for consideration by the Tribunal itself, without entering any findings on the merits of the case.

3. The accident occurred on 16.04.2003. The petitioner in O.P(MV) No.1234/2003 was driving a car from Kuttipuram to

Kunnamkulam. The other petitioners were passengers in the car except the petitioner in O.P(MV) No.1505/2003, who was the owner of the car. A tanker lorry bearing Reg.No.KL-9/K-6995 collided with it. The petitioners alleged negligence on the part of the driver of the said tanker lorry. One of the Original Petitions filed before the Claims Tribunal is in respect of the damage caused to the car and the claim for compensation, ie. O.P(MV) No.1505/2003. The award of the Tribunal details various aspects. PW1 was examined and Exts.A1 to A16 have been marked on the side of the appellants and Exts.B1 and B2 also have been marked on the side of the respondents.

4. Great challenge is made regarding the finding on the aspect of negligence. It is submitted by the learned counsel for the appellants that if a fresh opportunity is given to the appellants to adduce evidence - oral and documentary, they will be able to satisfy the Tribunal that, the negligence was on the part of the driver of the tanker lorry. We adopt the said course, since the plea is to provide further opportunity.

5. The issues will therefore be reconsidered by the Tribunal and hence we set aside the award. The appeals are accordingly allowed and the cases are remanded back for

consideration by the Tribunal, ie. all relevant and related aspects including the fixing of compensation. The parties will appear on 27.04.2015 before the Tribunal. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge