

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

MACA.No. 3041 of 2015 ()

AGAINST THE AWARD IN OPMV 2138/2006 of 2ND ADDITIONAL MOTOR ACCIDENTS
CLAIMS TRIBUNAL, THIRUVANANTHAPURAM DATED 18-05-2015

APPELLANT/PETITIONER IN OP(MV)NO.2138/2006:

BENNY MATHEW, AGED 54 YEARS
S/O. MATHEW, THONNAKKARA HOUSE, HOUSE NO.70A
MOSQUE LANE, PATTOM PO, THIRUVANANTHAPURAM.

BY ADVS. SRI. SABU S. KALLARAMOOLA
SRI. JOSH RAJAN (NALANCHIRA)

RESPONDENTS/RESPONDENTS IN OP(MV)NO.2138/2006:

1. MARIAMMA VARGHESE
PUTHAZHATHU HOUSE, TC 11/207, RAJIV SHAILAJA ROAD
NALANCHIRA PO
THIRUVANANTHAPURAM – 695 015 (REGD.
OWNER OF THE MARUTI ALTO CAR
BEARING REG.NO.KL 01 AE 393)
2. JOHN MATHEW
S/O. YOHANNAN P.K., RAJEEV SHAILAJA LANE, E,
PUTHAZHATHU HOUSE, NALANCHIRA PO
THIRUVANANTHAPURAM -695 015 (DRIVER OF THE VEHICLE)
3. M/S. NATIONAL INSURANCE CO. LTD.
GANDHARI AMMAN COIL ROAD, PULIMOODU, M.G. ROAD
THIRUVANANTHAPURAM
POLICY NO.8095126/04-INSURER OF THE VEHICLE BEARING
REG.NO.KL 01 AE 393

R3 BY SRI. M.A. GEORGE
BY ADV. SMT. DEEPA GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

M.A.C.A.No.3041 OF 2015

DATED THIS THE 16th DAY OF NOVEMBER, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

The appellant is the claimant in OP (MV)No.2138/2006 on the file of the 2nd Additional Motor Accident Claims Tribunal, Thiruvananthapuram, a claim petition filed under Section 166 of the Motor Vehicles Act, claiming compensation for the injuries sustained in a motor accident alleged to have occurred on 13.9.2004. The Tribunal by award dated 18.5.2015 dismissed the claim petition on the ground that the documents on record would not indicate that a motor accident had actually occurred on 13.9.2004 at M.G.Road, as alleged by the appellant and that the alleged accident was on account of the rash and negligent driving of the motor car by the 2nd respondent. The Tribunal has also held that the materials on record are inadequate to prove that the injuries sustained by the appellant are due to the alleged motor accident.

2. Aggrieved by the dismissal of the claim petition, the appellant is before this Court in this appeal.

3. We heard arguments of the learned counsel for the

appellant and also the learned counsel appearing for the 3rd respondent insurer.

4. Going by the pleadings on record, at the time of accident the appellant was riding a motor cycle bearing registration No.KL-01/U-4928 from Mannanthala to Kesavadasapuram with his wife as the pillion rider. While the motor vehicle reached in front of MG College, near Orient Timbers, a Maruthi Alto car bearing registration No.KL-01/AE-393, owned, driven and insured by respondents 1 to 3, which was going in front of the scooter abruptly applied a break, as a result of which the appellant lost control and the motor cycle hit on the back side of the maruthi car. The appellant fell on the road and sustained serious injuries.

5. Before the Tribunal, respondents 1 and 2 filed joint written statement contending that the petition is not maintainable and that it is bad for non-joinder of necessary parties, namely, the owner and insurer of the scooter. They also contended that, the accident occurred only due to the negligence on the part of the appellant and that the claim petition was filed after a lapse of two years, after belated registration of a crime. The 2nd respondent driver of the car was holding a valid driving licence

and the vehicle was also insured with the 3rd respondent insurer.

6. The 3rd respondent insurer has also filed a written statement raising similar contentions. The 3rd respondent contended that since there is a delay of 483 days in registering the crime, there is genuine doubt with regard to the actual occurrence of the accident.

7. On the side of the appellant Exts.A1 to A3 were marked and on the side of the respondents Exts.B1 and B2 were marked. Both sides have not chosen to adduce any oral evidence.

8. On an appreciation of the facts of the case and the materials on record, the Tribunal dismissed the claim petition holding that the materials on record are not sufficient to arrive at a justifiable conclusion that the injuries sustained by the appellant are due to the alleged motor accident and that the accident occurred due to the negligence on the part of the 2nd respondent driver of the car.

9. It is well settled that the standard of proof required in a claim petition filed under Section 166 of the Motor Vehicles Act is different from that required in a criminal case. In deciding matters arising out of accident, the Tribunal should bear in mind the caution struck by the Apex Court that a claim petition before

the Tribunal is neither a criminal case nor a civil case and that the standard of proof required is much below than what is required in a criminal case as well as in a civil case.

10. In the case on hand, as noticed by the Tribunal, the appellant has not chosen to produce any documents to prove that the accident occurred as stated in the claim petition and that it occurred due to the rash and negligent driving of the car by the 2nd respondent. In the written statement filed by the 3rd respondent insurer, it was contended that there is a delay of 483 days in registering the crime based on a complaint filed by the appellant, which was forwarded to the Police under Section 156 (3) of the Code of Criminal Procedure.

11. The claim petition was of the year 2006 and the same was pending before the Tribunal for more than 9 years. The appellant has not chosen to enter the box. From the grounds raised in the appeal, it is seen that after the claim petition was reserved for passing Award, the appellant moved I.A.No.3851/2015 to call for the case diary in Crime No.149/2006 from the City Traffic Police Station, Thiruvananthapuram and it was without considering the aforesaid application, the Tribunal passed the impugned Award. We notice that, after the filing of

the claim petition, the appellant has not taken any earnest efforts to produce materials to prove the basic fact that the accident occurred as stated in the claim petition and that it occurred due to the rash and negligent driving of the car by the 2nd respondent. The only documents marked on the side of the appellant are Ext.A1 certificate dated 19.2.2015, suggesting a disability of 10%, Ext.A2 salary certificate dated 22.12.2014 and Ext.A3 discharge summary dated 'nil'.

12. Negligence on the part of the driver of the offending vehicle is a factual issue, which has to be established before the Tribunal through cogent and convincing materials on record. As already noticed, the appellant has not chosen to enter the box. The documents produced as Exts.A1 to A3 would not in any manner establish the factum of accident and the negligence on the part of the 2nd respondent in causing the said accident. In an application filed under Section 166 of the Motor Vehicles Act, it is imperative for the claimant to plead and prove that the accident occurred as alleged in the claim petition. The materials on record as Exts.A1 to A3 would not indicate that an accident as claimed by the appellant had occurred on 13.9.2004 at about 9.45 a.m. near M.G.College, Thiruvananthapuram. Having failed to produce

the relevant materials before the Tribunal, the appellant cannot now validly challenge the dismissal of the claim petition on the ground that the materials on record are not sufficient to arrive at a justifiable conclusion that the injuries sustained by the appellant are due to the alleged motor accident and that the accident occurred due to the negligence on the part of the 2nd respondent.

13. While dismissing the claim petition, the Tribunal has also taken note of Rule 23 of the Rules of the Road Regulations, 1989, issued by the Central Government in exercise of the powers conferred by Section 118 of the Motor Vehicles Act, for regulating driving of motor vehicles. Rule 23, which provides for "distance from vehicles in front", states that the driver of a motor vehicle moving behind another vehicle shall keep at a safe distance from that other vehicle to avoid collision if the vehicle in front is suddenly slow down or stop. Rule 24, which deals with "abrupt break" states that no driver of a vehicle shall apply break abruptly, unless it is necessary to do so for safety reasons.

14. Therefore, going by Rule 23 read with Rule 24, in order to prove negligence on the part of the 2nd respondent driver of the car, the appellant will have to establish that he was riding the motor cycle behind the car driven by the 2nd respondent, keeping

sufficient distance from that vehicle and that the 2nd respondent applied break abruptly without any safety reasons.

15. In **Prasanna v. KSRTC (2008 (4) KLT 953)** a Division Bench of this Court held that, application of brake suddenly is a reflex action and is not a premeditated thing done after giving indication or after giving signal to the vehicle following and that, a vehicle following another vehicle should take into account the eventuality of the vehicle going in its front stopping abruptly which may be for large number of reasons such as a person or animal jumping in front of it or another vehicle interfering in its way or even a sudden obstacle appearing in the road. In all such eventualities any moving vehicle will stop abruptly and the driver applies brake suddenly without any premeditation and it is more in the nature of a reflex action than a pre-meditated act to stop the vehicle. No such driver can be blamed for negligence or rash driving in such circumstances.

16. In the absence of any relevant materials to arrive at such a conclusion, the Tribunal cannot be found fault with in concluding that the appellant sustained injuries due to his own negligence.

Therefore, we find absolutely no grounds to interfere with the reasoning of the Tribunal that the appellant failed to establish the factum that he had actually sustained injuries due to the rash and negligent driving of the car by the 2nd respondent and that he is not entitled to get any compensation.

In the result, the appeal fails and the same is dismissed. No order as to costs.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn

True copy

P.S. to Judge