

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

MACA.No. 482 of 2008 ()

AGAINST THE AWARD IN OPMV 165/2000 of MACT,PALAKKAD DATED
02-03-2007

APPELLANT/ 2ND RESPONDENTS IN THE OP(MV) :

NATIONAL INSURANCE COMPANY
BRANCH OFFICE, FORTMAIDAN, PALAKKAD
REP.BY ITS, ASSISTANT MANAGER
NATIONAL INSURANCE COMPANY LTD.
KOCHI REGIONAL OFFICE, P.B.NO.3235, OMANA BUILDINGS
JEWS STREET, PADMA JUNCTION, KOCHI 682 035

BY ADV. SRI.LAL GEORGE

RESPONDENTS/PETITIONER AND 1ST RESPONDENT IN THE OP:

1. M.RANGASWAMY, S/O MUKKANNA GOUNDER
AGED 40 YEARS, 2/70, THOLAMPALAYAM
VIA. SEELIYUR, KARAMADI, METTUPALAYAM TALUK
COIMBATORE DISTRICT, TAMILNADU.

2. P.M. YOHANNAN,
M.G. PARTNER, HIGHWAY CONSTRUCTIONS, T.B.ROAD
PALAKKAD. (DELETED)

* NAME OF SECOND RESPONDENT IS DELETED FROM PARTY ARRAY
AS PER ORDER DATED 8.1.2009 IN I.A.NO.600/2008.

R1 BY ADV. SRI.RAJESH SIVARAMANKUTTY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 24-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.482 OF 2008

Dated this the 24th day of July, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the Insurance Company aggrieved by the award passed by the Motor Accidents Claims Tribunal, Palakkad. The injured in this case is the first respondent, who was driving the mini lorry bearing Reg.No. T.N.01A-6463 and the collision was with a tipper lorry. The point raised in this appeal is that negligence can be attributed only against the first respondent and not to the driver of the other vehicle. It is submitted that the Tribunal, in spite of the Police charge against the first respondent believed the oral version of the first respondent and found that the driver of the tipper lorry was negligent.

2. Before going into the further aspects of the case, it may be necessary to refer to the case of the claimant before the Tribunal and the evidence adduced by the parties. The same is necessary since even according to the finding of the Tribunal, the first respondent has given

a different version in the oral evidence. We find from the averments in the claim application that on 16.12.1998, the first respondent was driving the mini lorry from Aluva to Coimbatore after unloading the goods. The spot of accident is near Peechi road junction in the National Highway 47 and the accident occurred at 11.30 a.m. According to the claimant, the tipper lorry bearing Reg.No. KL 9A/9518 was coming in a rash and negligent manner through the opposite side and hit against the mini lorry of the claimant.

3. The facts further show that the first respondent alone got injured in the accident. He filed the application for compensation in the light of the fact that he had sustained serious injuries and the Tribunal has granted a total amount of ₹1,45,512/- as compensation. The evidence is also to the effect that he has sustained 5% disability and he was under treatment for a long period in the hospital also.

4. The claimant was driving the vehicle at that point of time. He was examined as PW1 before the Tribunal. It can be seen from paragraph 9 of the award of the Tribunal that when examined, he admitted that he was overtaking another vehicle and then the tipper

lorry came from Peechi road without giving any warning. His version is that while he was attempting to overtake a tanker lorry and as several buildings were there on both sides of Peechi road, it obstructed his visibility and the tipper lorry suddenly entered the National Highway and hit the vehicle driven by him. The Tribunal observed that if the version of PW1 is believed, it may indicate that the tipper lorry came from side road and entered the National Highway without warning.

5. Sri.Lal George, the learned counsel for the Insurance Company submitted that there are two crucial factors which will go against the oral evidence of the claimant. One is that he had pleaded guilty to the charges before the Criminal Court and he was convicted and the Criminal Court imposed a fine of ₹1,500/- which he paid. The second one is that in the Police charge he alone is the accused and when the Police charge is there against the driver, it is prima facie sufficient evidence to prove negligence going by the judgment in *New India Assurance Co. Ltd. v. Pazhaniammal (2011 (3) KLT 648)*. It is therefore submitted that the uncorroborated version of PW1 which is

different from his version in the claim application cannot be accepted on its face value.

6. We have gone through the oral evidence of PW1. According to him, he was returning from Thrissur to Coimbatore and he overtook a tanker lorry at a place called Pattikkad and then a tipper lorry which was coming from Peechi road turned towards the National Highway towards west and hit the right side of his lorry. According to him, the driver of the tanker lorry gave signal and therefore he overtook the said vehicle. It is also stated that the accident occurred on the National Highway. It is also his case that Peechi road is a road on the southern side of National Highway and there are buildings on the junction where it joins the National Highway and therefore if the vehicle reaches the National Highway suddenly, the same will not be visible for vehicles coming through the National Highway. According to him, only because of the negligence of the driver of the tipper lorry the accident occurred.

7. The scene mahazar has been marked as Ext.A2. The road at the place of accident is having a width of 7 metres. It can also be seen

from the scene mahazar that the old National Highway is on the northern side.

8. The learned counsel for the first respondent Sri.Rajesh Sivaramankutty submitted that evidently the tipper lorry was coming from Peechi road namely through the old National Highway and this could not have been visualized by the first respondent. It is seen from the scene mahazar that the entire front portion of the mini lorry got damaged and as far as the tipper lorry is concerned, its right side has been damaged. These items of evidence will give a picture of the accident in this case. The crucial question is whether PW1 could be believed as regards the details of the accident.

9. It is vehemently argued by the learned counsel for the first respondent that the Police charge as well as the contents of the scene mahazar have been truly contradicted by the oral evidence of the first respondent and therefore it was right on the part of the Tribunal to believe PW1 and exonerate him from the allegation of negligence.

10. There cannot be any doubt on the law on the point. A Division Bench of this Court in *New India Assurance Co. Ltd. v.*

Pazhaniammal (2011 (3) KLT 648) had occasion to analyse the effect of Police charge and its impact on the aspect of negligence in motor accidents claims cases. In paragraphs 7 and 8, the Division Bench held as follows :

“7. In this context we feel it appropriate to refer to the practice adopted by many Tribunals in the State. Wherever a crime has been registered in respect of the accident and the investigation has culminated in the filing of a charge sheet by the police, such charge sheet is filed and the same is reckoned as sufficient to establish negligence on the part of the indictee. The practice has not received formal judicial approval and hence some Tribunals insist on oral evidence in support of negligence invariably. This consumes a lot of judicial time and the heavily over worked Tribunal spends its time on unnecessary oral evidence of negligence. We would certainly not want the Tribunals to be prisoners of the conclusions of police officers. If the Tribunal finds it suspicious, it can insist for better evidence. But 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 oral evidence is adduced by any party, in a case where charge sheet is filed, the Tribunals should give further opportunity to others also to adduce oral evidence and in such a case the charge sheet will pale into insignificance and the dispute will have to be decided on the basis of the evidence. In all other cases ssuch charge sheet can be reckoned as sufficient evidence of negligence in a claim under S.166 of the Motor Vehicles Act. We mean to say that on production of such charge sheet the shifting of burden must take place. It is not as though we are not conscious of the dangers and pit falls involved in such an approach. But we feel that adoption and recognition of such practice would help to reduce the length of the long queue for justice before the Tribunals. The judicial recognition of the practice will help the Tribunals to ensure the optimum use of judicial time at their disposal for productive ventures.

8. We do not intend to say that collusive charge sheets need be accepted. Wherever on the facts of a

given case the Tribunals feel that the police charge sheet does not satisfy their judicial conscience, the Tribunals can record that the charge sheet cannot be accepted and can call upon the parties, at any stage, to adduce oral evidence of the accident and the alleged negligence. In such a case, the issue of negligence must be decided on the other evidence, ignoring the charge sheet.”

11. Going by the same, Police charge sheet is a prima facie evidence of negligence. Of course, if the Tribunal feels any doubt about the Police charge, oral evidence could be allowed to be adduced and then onus is shifted to the other side. The question is whether the latter portion of the dictum laid down therein whereby the parties could adduce oral evidence for shifting the burden has been truly discharged in this case. To support the version of PW1, two things should have been established. One is that the accident occurred in the spot where the Peechi road joins the National Highway. Secondly that the tipper lorry was coming through the Peechi road and was entering the National Highway without giving any warning or signal to other vehicles. On these two aspects, except the oral evidence of PW1, no

other evidence is there.

12. We have gone through the scene mahazar to find out whether there is any mention of any of the side road joining the National Highway at the spot of the accident. We could not find any indication from the scene mahazar of a side road joining the National Highway just on the spot of the accident or very near to it. PW1's version as evident from paragraph 9 of the judgment is that the incident occurred before he reached Peechi junction. Of course, the burden was on PW1 to establish the same also and he did not summon the Police officer who prepared the scene mahazar so as to put suggestions to him. There is no other independent evidence also. Therefore when the Tribunal has chosen to accept his evidence, it was without attributing to these aspects. The Tribunal wrongly believed the evidence of PW1 even after observing that the same is a version different from the version given in the claim application. Of course the accident occurred very near to a junction. The Police charge is to the effect that the tipper lorry was coming through the National Highway. The assertion by PW1 that the said vehicle was entering through a side road to the

National Highway is not supported by any independent evidence.

13. Of course, very vehemently the learned counsel for the first respondent submitted that if the oral evidence of PW1 could be accepted, it could be found that the negligence is on the part of the driver of the tipper lorry. According to him, PW1 stood to his ground in the cross examination also. Here the spot of accident is evidently on the southern side. It is 160 cms. from the southern tarred end. Therefore, the vehicle driven by the first respondent was on the wrong side since National Highway had a width of 7 metres there. He also admitted that he was overtaking another vehicle.

14. We tried ourselves to understand from the pleadings and the evidence as to whether there was a possibility of the tripper lorry coming through the side road and then suddenly entering the National Highway, which caused the accident. But the indications even going by the documentary evidence could not convincingly lead to such a conclusion. Of course, as far as the tipper lorry is concerned, the impact of the hit is on the right side, whereas the mini lorry driven by the first respondent is concerned, the entire front portion has been

damaged. Even if there is any unexplained portion as far as the said part of the evidence is concerned, in the absence of clear evidence in the matter, we could not justify ourselves in attributing negligence on the part of the driver of the said vehicle.

15. The Insurance Company had a case before the Tribunal, even in the written statement, that the first respondent had pleaded guilty and was convicted. In the version given by PW1 in the evidence, according to him, he pleaded guilty as instructed by the Police and since the driver of the tipper lorry paid the fine amount. As far as this version is concerned, the learned counsel for the first respondent submitted that the effect if any of the conviction due to pleading guilty is diluted by the said version. Of course, the same is also an unsupported version. The driver of the tipper lorry was not summoned or examined by the first respondent. Even though the said driver was not a necessary party, nothing prevented the first respondent from summoning him and suggesting various matters to him as regards the cause of the accident. That was also not attempted. Therefore the version of PW1 that he was compelled by the Police to plead guilty

also cannot be accepted on the face value. The learned counsel for the Insurance Company relied upon various decisions to contend that when a person has pleaded guilty that amounts to an admission and therefore the Tribunal should have accepted that.

16. Even without going into the legal effect of the conviction based on pleading guilty in this case, in view of the Police charge against him and as there is no evidence to indicate that the accident spot was a place where Peechi road joins the National Highway and that the tipper lorry was coming through the said road before entering the Highway and the evidence is wanting on this aspect, we cannot absolve the first respondent from the Police charge against him for rash and negligent driving. Therefore, the Tribunal's view that the evidence of PW1 can be accepted has to be reversed and we do so.

17. The compensation granted by the Tribunal includes an amount of ₹ 50,000/- towards damage to the vehicle. Ext.X1 is the disability certificate issued by the Medical Board showing 5% disability. He had sustained multiple fractures on the leg. He was treated in two different hospitals. Compensation has been granted

under different heads including loss of income, pain and suffering, medical expenses and disability. It is clear that the claimant has sustained serious injuries also. Therefore, by invoking Section 140 of the Motor Vehicles Act, we pass an award in favour of the first respondent for an amount of ₹25,000/- (Rupees twenty five thousand only) with 9% interest from the date of filing of the petition. We exonerate the appellant as regards the liability for the balance amount. The learned counsel for the Insurance Company submitted that the amount deposited by the Insurance Company under Section 173 of the Motor Vehicles Act may be refunded. In view of the modified award passed by us, the Tribunal will be free to take steps as regards payment of the said amount to the claimant after adjusting the same against the awarded amount and the balance amount will be deposited by the Insurance Company.

The appeal is allowed to the above extent. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

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K.P.JYOTHINDRANATH, JUDGE