

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

MACA.No. 1454 of 2010 ()

OPMV 760/2006 of M.A.C.T.,KOLLAM

APPELLANT(S)/CLAIMANT:

THULASI,AGED 43,S/O.GANGADHARAN,
BINU NIVAS, THETTIKUZHI, KOTTAKKARAM
PARIPPALLY, KOLLAM 691 574.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENT(S)/RESPONDENTS:

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1. NIZAMUDEEN,S/O.ABDUL JABBAR,NIZAM MANZIL
PANAVOOR, NEDUMANGAD, THIRUVANANTHAPURAM - 695 568.
(* DELETED)
 2. KUNJUMON,S/O.RAGHAVAN PILLAI,
NAVEEN NIVAS, MUKKANNOOR, VELAMKONAM
VELLANAD VILLAGE, VENJARANMOODU.P.O
THIRUVANANTHAPURAM - 695 607.
 3. M/S.NEW INDIA INSURANCE CO.LTD.,
BRANCH OFFICE, KOLLAM 691 001.

(* THE NAME OF THE FIRST RESPONDENT IS DELETED FROM THE
PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER ON
I.A.NO.115 OF 2011 DT. 18.1.2011)

R.R3 BY ADV. SRI.PMM.NAJEEB KHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.A.C.A. No.1454 of 2010

Dated 1st June, 2015.

J U D G M E N T

The claimant in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal, challenging the decision of the Tribunal.

2. The claim petition was filed alleging that on 17.2.2005, while the claimant was walking through the western side of N.H.47 from south to north at Parippally Junction, the second respondent came from behind in the very same direction in the motor cycle bearing registration No.KL-01/U-2480 and knocked him down. According to the claimant, the accident occurred on account of the negligence of the second respondent. The first respondent was the owner of the vehicle ridden by the second respondent and the third respondent was its insurer.

3. Respondents 1 and 2 remained ex parte. The insurer contested the claim petition contending that the accident occurred on account of the negligence of the claimant

and that the second respondent was not holding a licence to ride the motor cycle involved in the accident.

4. The Tribunal found that the negligence of the claimant also contributed to a limited extent for the accident. The Tribunal also found that the second respondent was not holding a licence to ride the motorcycle involved in the accident. In the light of the said findings, the Tribunal disposed of the claim petition permitting the claimant to recover 80% of the compensation determined as due from the owner of the vehicle. The claimant is aggrieved by the said decision of the Tribunal.

5. Heard the learned counsel for the claimant and the learned counsel for the insurer.

6. The Tribunal found from Ext.A2 scene mahazar that at the scene of occurrence, the width of the tarred road was 10 meters and the place of occurrence was at 1.10 meters east from the western tarred end. The Tribunal also found that in Ext.A5 wound certificate, it was recorded that the accident occurred while the claimant was attempting to cross the road.

It was on the basis of the said facts, the Tribunal came to the conclusion that the negligence of the claimant also contributed to a limited extent for the accident. Merely for the reason that the accident took place at a point which is 1.10 meters east from the western tarred end of the road, it cannot be presumed that the claimant, who was proceeding from south to north has contributed for the cause of the accident. The road at the relevant place was having the width of 10 meters. As such, there was sufficient space for the second respondent to proceed towards north. Further, it is seen that the claimant sustained fracture of tibia. Had it been a case where the accident took place while the claimant was crossing the road from west to east, serious injuries as sustained by the claimant on his left leg would have been caused on his right leg. Further, there is nothing on record to indicate as to who gave the statement to the doctor who prepared Ext.A5 wound certificate, based on which the doctor has recorded in the wound certificate the cause of accident. The doctor who prepared Ext.A5 wound certificate was also not examined. In the said

circumstances, it was improper for the Tribunal to rely on the statement contained in the wound certificate to hold that the negligence of the claimant also contributed the accident. The finding of the Tribunal that the claimant was negligent to the extent of 20% for the cause of the accident, in the circumstances, is liable to be vacated.

7. Coming to the liability, the Tribunal found that the second respondent was not holding a licence. If the driver was not holding a licence, the same will amount to a breach of the conditions of the policy. It is now settled that the victim of a motor accident is not responsible for the breach of the conditions of the policy committed by the owner to whom the policy is issued. In such cases, the insurer will only get a right to recover the compensation from the owner, after satisfying the award. The insurer is not entitled to be exonerated from the liability to pay compensation to the claimant. In so far as the issuance of the policy is admitted, the insurer is liable to pay compensation to the claimant.

In the result, the impugned award is modified. The

finding of the Tribunal that the claimant was negligent to the extent of 20% for the cause of the accident is vacated. The claimant is permitted to recover the compensation from the third respondent. Needless to say, the third respondent is entitled to recover the compensation from the owner of the vehicle after satisfying the award. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)