IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

MACA.No. 1801 of 2009 ( )

AGAINST THE AWARD IN OPMV 1109/2007 of M.A.C.T.,PERUMBAVOOR DATED 06-12-2008

APPELLANT(S)/PETITIONER:

ROBIN J.KURUPPAMADOM, S/O.JOSE,
AGED 26 YEARS, KURUPPAMADOM (H), VAZHAKULAM P.O.
AVOLY VILLAGE, MUVATTUPUZHA TALUK.

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENT(S)/RESPONDENTS:

1. PRABHAKARAN PILLAI, S/O.GOPALA PILLAI,
AGED 48 YEARS, PATTAMADATHU (H)
ETTUMANOOR (KIZHAKKUM BHAGAM)P.O.
KOTTAYAM DIST. (DRIVER).

2. K.N.CHANDY, S/O.OUSEPH,
KARANAMKODU HOUSE, PEROOR P.O., ETTUMANOOR
KOTTAYAM DIST. (OWNER).

3. THE NEW INDIA ASSURANCE CO.LTD.,
POOZHIKALA BUILDING, M.C.ROAD, ETTUMANOOR P.O.
KOTTAYAM DIST., (POLICY NO:317615 0130603).

R3 BY ADV. SRI.P.G.GANAPPAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
P. BHAVADASAN, JJ.

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M.A.C.A. No. 1801 of 2009

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Dated, this the 30th day of November, 2015

JUDGMENT

Ramachandra Menon, J.

Dismissal of the claim petition preferred by the appellant/claimant, who was a pillion rider on a motor cycle, in respect of the injuries sustained in an accident, when the motorcycle was knocked down by a stage carriage bus which was coming from the opposite side, fixing negligence solely on the rider of the motorcycle and exonerating the driver, owner and insurer of the bus, merely placing reliance on the scene mahazar (as to the place of occurrence) and ignoring the final report/charge sheet prepared by the police fixing negligence on the part of the driver of the bus; is under challenge in this appeal.

2. The accident was on 15.04.2004. The appellant was travelling as pillion rider on the motor cycle bearing No. KL10 M 5358 from south to north, keeping the western side of the road. When the motorcycle reached the place of occurrence, the bus bearing No. KRO

7866 driven, owned and insured by the respondents 1 to 3 respectively came from the opposite side and knocked the riders down, causing serious injuries, which led to two claim petitions.

3. The appellant contended before the Tribunal that the accident was solely because of the negligence on the part of the driver of the bus; that he was proceeding towards north along the western side of the road; that the bus came in a rash and negligent manner at excessive speed and after hitting the motor cycle throwing the riders down, the motorcycle was dragged on to some distance, taking it to other side of the road. The driver and owner of the bus did not choose to contest the matter and were set exparte. The insurance company contested the matter only on general grounds, as no statutory ground of defence as to violation of any statutory/policy condition was available.

4. The evidence adduced before the Tribunal consists of the documents produced as Exts. A1 to A8 and Ext. X1 hospital chart issued from the Lisie hospital, Ernakulam in respect of the treatment availed by the appellant, besides the oral deposition of PW1 and PW2. Nobody was examined from the part of the respondents and no document was ever produced.

5. After considering the evidence on record, the Tribunal observed that the place of occurrence shown in the scene mahazar was at 4.67 metres east from the western tarred end of the road, which was having a total width of 7.25 metres. From this, it was held as evident that the motorcycle was on the wrong side of the road and hence it was only because of the negligence on the part of the rider of the motorcyle that the accident was occurred. The material evidence reflected from the documents produced; as to the scratch marks of about 10m. on the road, the distant vision available to both the sides of the road, the charge sheet prepared by the police against the driver of the bus after investigation, and oral testimony of PW1 and PW2 (including an occurrence witness), were simply given a 'go-bye' and the claim petition was quite casually dismissed, even forgetting the fundamental fact that, in so far as the appellant/claimant was concerned, it would only be a matter of 'composite negligence'. This in turn is under challenge in this appeal.

6. Heard the learned counsel for the appellant as well as learned counsel appearing for the insurance company.

7. On going through the materials on record, it is seen that

there is no dispute with regard to the accident occurred involving two vehicles which were coming from the opposite sides. Even if the place of occurrence, as reflected from the scene mahazar, is taken as correct, it could be said that the motorcycle has crossed the midline of the road by just 1.20m. Even then, that by itself is not a ground to hold that the driver of the bus was not negligent. It does not give the driver of the bus any authority to knock down the riders, who have crossed the mid-line of the road, more so when clear distant vision was available to both the sides, to an extent of 150m. to the south and 110m. towards north. The specific case put forth by the claimant was that, it was after knocking him down, that the bus driven in a tremendous speed dragged the motorcycle to an extent of 10m away, taking it into the wrong side of the road. The occurrence of the accident in the said manner was spoken to by the rider of the motor cycle, as borne by Ext. A5 F.I. statement given to the police. Apart from the deposition of PW1/claimant in this regard, the occurrence witness examined as PW2, who was proceeding on a bicycle behind the motorcycle, has also deposed that, after hitting the motorcycle, the bus dragged the motorcycle to some extent. In paragraph 8 of

the Award, the Tribunal has noted that there was distant vision at the spot of occurrence to an extent of 150m. to the south and 110m to the north and further that there was scratch marks for about 10 m. on the road. This aspect would probablise the version of the claimant, supported by the documentary and oral testimony given by the witness concerned. It is also evident that there was a road margin of 1.20m. on the western side, whereas on the eastern side (which was the proper side for the bus coming from north to south), the road margin was about 3m. Still, the driver of the bus appears to have not taken care and caution to the requisite extent to avoid the accident and as such the verdict passed by the Tribunal exonerating the driver of the bus in toto, fixing the negligence solely on the rider of the motor cycle is wrong and unsustainable. It is held accordingly.

8. Another important aspect to be noted is that, in so far as the appellant/claimant is concerned, he was admittedly travelling as pillion rider on the motorcycle, which collided with the bus. As far as the appellant/claimant is concerned, it was a case of 'composite negligence'. The appellant claimant could have proceeded against the parties of either vehicle. This fundamental aspect was omitted

to be noted by the Tribunal while fixing negligence solely on the part of the rider of the motorcycle and in turn, dismissing the claim petition.

9. The injuries sustained by the appellant/claimant are very serious, as put forward by the learned counsel for the appellant, which as given in paragraph 1 of the appeal memorandum are as noted below:

(1) Head injury - Extra Dural Haematoma (R)

(2) Frontal Parietal Convexity

(3) Frontal condusion

(4) Type II Open fracture of both bones at left leg.

(5) Fracture of anterior and lateral wall of left maxillary sinus.

(6) Fracture of Right maxillary sinus.

10. The nature of injuries and consequences have not been referred to or discussed by the Tribunal as the claim came to be dismissed, fixing negligence solely on the rider of the motor cycle. Since this Court has already held that fixation of negligence by the Tribunal is not correct and proper, the matter requires to be reconsidered. The question of 'composite negligence' (instead of

contributory negligence) and also as to the quantum of compensation payable, including the extent of liability, if any, require to be dealt with. This necessitates fresh consideration of facts and figures based on the pleadings and evidence on record.

11. In the said circumstances, the Award under challenge is set aside. The matter is remanded for fresh consideration. It is open for both the sides to adduce additional evidence, if any. Since the accident was of the year 2004 and the matter is lying for nearly 6 years, the claim petition shall be finalized by the Tribunal at the earliest, at any rate, within 4 months. Both the parties are directed to appear before the Tribunal on 04.01.2016.

sd/-

P. R. RAMACHANDRA MENON,
JUDGE

sd/-
P. BHAVADASAN,
JUDGE

kmd