

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

MACA.No. 1868 of 2009 ()

AGAINST THE AWARD IN OPMV 2821/2003 of PRINCIPAL M.A.C.T., KOZHIKODE
DATED 30-09-2008

APPELLANTS/PETITIONERS IN OPMV.:

MUHAMMED NAJEEB, S/OAHAMMED KOYA
RESIDING AT PULPARAMBIL HOUSE, PALATH POST
KAKKODI-VIA, KOZHIKODE DISTRICT.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS/RESPONDENTS IN OPMV.:

1. RAJESH, S/O KUNHIRAMAN
CHALLALANKADIYIL HOUSE, KALLACHI POST, VADAKARA
KOZHIKODE DISTRICT.

2. THE NEW INDIA ASSURANCE CO.LTD.,
BRANCH OFFICE, VADAKARA, KOZHIKODE.

R2 BY ADV. SMT.M.HEMALATHA
R1 BY ADV. SRI.C.VATHSALAN
R1 BY ADV. SRI.K.RAKESH ROSHAN
R1 BY ADV. SMT.THUSHARA.V

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1868 OF 2009

Dated this the 8th day of June, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the petitioner before the Tribunal. The appellant sustained very severe injuries in a motor vehicle accident while he was travelling in a bus. The said application was dismissed by the Tribunal. The Tribunal even doubted the genuineness of Exts.A2 and A3 documents.

2. When the appeal came up for hearing, the learned counsel for the appellant submitted before us that while the appellant was travelling in a bus bearing Reg.No.KL -11-A-1229, appellant sustained injuries on his elbow. He was resting his hand on the side window and a passing jeep bearing Reg.No.KED 1377 hit against his hand and sustained injuries.

3. The appellant filed claim petition before the Tribunal

arraying the owner and the Insurance Company of the jeep as the respondents and Exts.A1 to A3 were marked. The Tribunal after appreciating the materials and evidence came to the conclusion that the accident was not proved and the Tribunal even suspected the genuineness of the documents produced.

4. The main submission before us is that the approach of the Tribunal is not correct. It is also the submission that even as per the decision of the Honourable Supreme Court, it is the duty of the Tribunal to summon the documents and evaluate the materials. In this case, the appellant was even ready to assess the disability by a Medical Board. It is also the submission that the appellant produced police documents to prove his case before this Court.

5. After hearing the learned counsel on both sides, we find that it will be only just and proper to remand the matter to the lower Tribunal for a fresh disposal. Thus an open remand is made to dispose the matter afresh. The appellant is at liberty to take back the documents produced before this Court so as to produce the same before the Tribunal. It is also made clear that if an application is filed before

the Tribunal for assessment of the disability of the appellant, it shall be considered on merits. The parties shall appear before the Tribunal on 21.07.2015. The Registry is directed to transmit the records.

The appeal is accordingly disposed of.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.