

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

MACA.No. 1569 of 2010 ()

AGAINST THE AWARD IN OPMV.NO.1543/2002 of MACT,
PATHANAMTHITTA, DATED 05-02-2010.

APPELLANT/PETITIONER IN OP (MV) :-

JAMES P.BABY, S/O.C.D.BABY,
PUNNILATHU JAYA BHAVAN,
KADAMBANADU SOUTH.P.O.,
KADAMBANADU VILLAGE.

BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS/RESPONDENTS IN OP (MV) :-

1. SOMARAJAN,AMBADIYIL VEEDU,PATHAYIL,
NOORANADU, (DELETED)

2. N.BADARUDEEN,PLAVILA VADAKATHIL VEEDU,
PARAKULAM(W), ADOOR-691523.

3. THE BRANCH MANAGER,NEW INDIA ASSURANCE
CO.LTD, COLLEGE ROAD, PATHANAMTHITTA-689 545.

BY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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M.A.C.A.No.1569 of 2010

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Dated this the 15th day of July, 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 the claimant sustained injuries in the accident took place on 6.6.2002 involving a mini lorry bearing Reg.No.KL 2B 4634 owned by the second respondent and driven by the first respondent. The third respondent was the insurer of the vehicle. The third respondent contested the claim petition mainly on the ground that the accident occurred on account of the negligence of the claimant. The Tribunal accepted the contention of the third respondent in part holding that the claimant was negligent to the tune of 50% in the matter of causing the accident. Consequently, though the

compensation due to the claimant was determined by the Tribunal at Rs.93,545/-, an award was passed directing the third respondent to pay only a sum of Rs.46,773/- to the claimant. The claimant is aggrieved by the said decision of the Tribunal.

3. Heard the learned counsel for the appellant.

4. Unusually, it is seen from the records that the claimant in this case had given oral evidence in the claim petition as PW1. As PW1, the claimant had deposed before the Tribunal that at the time of the accident, the claimant was riding a scooter through M.C. Road from south to north and when he reached the place called Adoor Central Toll, he turned the vehicle towards right to proceed through K.P. Road and the vehicle driven by the first respondent which came from the opposite direction at that point of time hit against the vehicle of the claimant. He also stated that the accident occurred on account of the negligence of the first respondent. Though PW1 was cross-examined, nothing was brought out to discredit his version regarding the accident.

The suggestion made to the claimant by the learned counsel appearing for the third respondent was only that the claimant was coming on the wrong side. Though there was a suggestion to that effect, there is no evidence on the side of the third respondent to show that the claimant was coming on the wrong side of the road. In addition to the oral evidence tendered by the claimant, he had also produced charge sheet in the crime registered by the police in connection with the accident in which he sustained injuries. Ext.A4 is the charge sheet. It is evident from Ext.A4 that the police, after due investigation, came to the conclusion that the accident occurred on account of the negligence on the part of the first respondent. The officer who conducted the investigation and submitted the charge sheet was not examined by the insurer to discredit the conclusion arrived at by him. Despite the aforesaid materials, the Tribunal accepted the case put forward by the insurer that the accident occurred on account of the negligence on the part of the claimant as well for the simple reason that the place

of occurrence was shown in Ext.A2 scene mahazar as 6.30 meters towards west from the eastern tarred end. Despite the aforesaid recital in the scene mahazar, the investigating officer came to the conclusion that the accident occurred on account of the negligence of the first respondent. In the aforesaid circumstances, the finding of the Tribunal that the accident occurred on account of the negligence of the claimant is unsustainable and liable to be vacated.

5. It is seen that the claimant has been granted interest for the compensation determined only at the rate of 7.5%. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum. As such, the interest granted to the claimant by the Tribunal for the compensation awarded is also liable to be revised.

6. In the result, the appeal is allowed. The finding of the Tribunal that the accident occurred on account of the negligence on the part of the claimant also is vacated. It is made clear that the claimant is entitled to recover the entire

amount of compensation determined as due from the third respondent. The interest granted to the claimant by the Tribunal for the compensation awarded is also revised to 9% per annum.

Sd/-
P.B.SURESH KUMAR,
(JUDGE)

Kvs/-

/// TRUE COPY ///

PA TO JUDGE.