

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

MACA.No. 814 of 2008 ()

**(OP(MV).NO. 1460/2003 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL, MUVATTUPUZHA DATED 10-12-2007)**

APPELLANT/PETITIONER IN OP(MV) 1460/03:

**BAIJU KUMAR, S/O. KUMARAN,
MUKALEL HOUSE, ELANJI VILLAGE, ELANJIKARA,
MUVATTUPUZHA TALUK.**

BY ADV. SRI.P.P.JACOB

RESPONDENT(S)/RESPONDENTS IN OP(MV) 1460/03 :

- 1. SAMJO, S/O. PATHROSE, QUARTER NO.A2,
P.V.I.P. PROJECT, BHOOOTHATHANKETTU KARA,
KOTHAMANGALAM.**
- 2. JOSE SEBASTIAN, ALANIKKAL HOUSE,
KANJIRAPPALLY P.O.**
- 3. UNITED INDIA INSURANCE CO. LTD.,
P.B.NO.78, DOCTORS TOWER, CHAGANACHERRY P.O.**
- 4. BABU, S/O.THOMAS, KADAVELIYIL HOUSE,
ELANJI P.O., ELANJI.**
- 5. P.G. THANKAPPAN, S/O. GANAPATHI,
POOVAMMALA, ADIMURIYIL HOUSE, ELAVOMTHITTA,
PATHANAMTHITTA.**
- 6. THE NEW INDIA ASSURANCE CO. LTD.,
MADAPPARAMPIL CHAMBERS, MUVATTUPUZHA.**

**R3 BY ADV. SRI.P.MURALEEDHARAN
R6 BY ADV. SRI.N.S.MOHAMMED USMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

P.B.SURESH KUMAR, J.

M.A.C.A.No.814 OF 2008

Dated this the 30th day of March, 2015

JUDGMENT

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

2. The accident took place on account of the collision of the motor cycle ridden by the first respondent with the scooter ridden by the fourth respondent. The claimant was travelling in the pillion of the scooter ridden by the fourth respondent. Respondents 2 and 3 are the owner and the insurer of the motor cycle respectively. The claim petition was filed alleging that the accident occurred on account of the negligence of the first respondent. The Tribunal dismissed the claim petition holding that the accident occurred on account of the negligence of the fourth respondent. The claimant is aggrieved by the said decision of the Tribunal and hence this appeal.

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

4. The road at the scene of occurrence lies in the east west direction. At the time of accident, the scooter ridden by the fourth respondent was moving from west to east and the motor cycle ridden by the first respondent was moving from east to west. Ext.A1 is the first information report in the crime registered in connection with the accident. Ext.A6 is the final report in the crime. In Ext.A6, it is alleged that the accident occurred on account of the negligence of the first respondent. The claimant gave evidence as Pw1. He also deposed that the accident occurred on account of the negligence of the first respondent. The first respondent has not adduced any contra evidence. Ext.A3 is the scene mahazar prepared by the police in the crime registered in connection with the accident. The Tribunal found from Ext.A3 that the place of accident was at 1.37 meters north from the southern tarred end of the road. As the scooter coming from west to east was expected to be on the northern side of the road, the Tribunal took the view that the only inference possible is to hold that the accident occurred on account of the negligence of the fourth respondent and it is on that basis, the Tribunal found that the accident occurred on

account of the negligence of the fourth respondent.

5. It is seen that the accident took place at 8.30 pm. No one except the claimant who witnessed the accident was examined in the proceedings. The scene mahazar is a document prepared by the police subsequent to the accident. The place of occurrence as noted in the scene mahazar need not always be correct. Further, the person who has prepared the scene mahazar has also not been examined. In the absence of any direct evidence as to the place of occurrence, according to me, the Tribunal should not have relied on the place of occurrence as recorded in Ext.A3 scene mahazar to dismiss the claim petition. In the light of the evidence entered by the claimant as Pw1 and Ext.A6 final report in the crime registered in connection with the accident, I am of the view that it can be safely concluded that the accident occurred on account of the negligence of the first respondent.

In the result, the impugned award is set aside and the Tribunal is directed to consider the claim petition afresh, after affording the parties an opportunity to adduce further evidence. The claim petition being of the year 2003, I deem it appropriate to direct the Tribunal to dispose of

the petition within a period of six months from the date of receipt of a copy of this judgment. Parties shall appear before the Tribunal on 8.6.2015.

P.B.SURESH KUMAR, JUDGE.

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