

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. 2565 of 2014 ()

AGAINST THE AWARD IN OPMV 113/2012 OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, ERNAKULAM, DATED 12-05-2014.

APPELLANT/PETITIONER:-

M.K.RAJASEKHAR
S/O KUJUNNY NAIR, MOOLAYIL HOUSE, CHOTTANIKKARA.P.O.
ERNAKULAM DISTRICT.

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

RESPONDENTS/RESPONDENTS:-

1. M.K.SATHI
W/O.MURALIDHARAN, 28/1420, MANAMMEL (KARTHIKA) HOUSE
K.P.VALLON ROA, KADAVANTHARA KOCHI - 682 020.

2. O.R.MURALIDHARAN
28/1420, MANAMMEL (KARTHIKA) HOUSE, K.P.VALLON ROAD
KADAVANTHARA, KOCHI - 682 020.

3. NATIONAL INSURANCE CO.LTD;
AJAY VIHAR, M.G. ROAD,
ERNAKULAM, KOCHI : 682 016.

R1 & R2 BY ADV. SRI.B.N.SHIVSANKAR
R3 BY ADV. SRI.LAL GEORGE

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

MACA.No. 2565 of 2014 ()

APPENDIX

PETITIONER(S) ' EXHIBITS:-

ANNEXURE A1: TRUE COPY OF THE JUDGMENT IN CC NO. 330/2011
DATED 19/02/2014 OF ACJM (E.O.), ERNAKULAM.

RESPONDENT(S) ' EXHIBITS:- NIL.

// true copy //

PA TO JUDGE.

Kvs/-

P.B.SURESH KUMAR, J.

M.A.C.A.No.2565 of 2014.

Dated this the 30th day of March, 2015.

J U D G M E N T

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

2. The claimant sustained injuries in an accident took place on 1.6.2011. The accident occurred on account of the collision of the motor cycle ridden by the claimant with the motor cycle ridden by the second respondent. The first respondent is the owner of the motor cycle ridden by the second respondent and the third respondent is the insurer of the said vehicle. According to the claimant, the accident occurred on account of the negligence of the second respondent. The third respondent contested the claim petition contending that the accident occurred on account of the negligence of both the claimant and the second respondent and as such, they are not liable to indemnify the

first respondent. The Tribunal, though found that the claimant sustained injuries in the accident and determined the compensation due to him, dismissed the claim petition holding that the accident occurred on account of the negligence of the claimant also. In the crime registered in connection with the accident, the police, after due investigation, found that both the claimant and the second respondent are responsible for the accident. It is accepting the said final report, the Tribunal has come to the aforesaid conclusion.

3. Heard the learned counsel for the appellant and the learned counsel for the third respondent.

4. The learned counsel for the appellant contended that the appellant was acquitted in the criminal case and as such, the rejection of the claim petition based on the final report in the criminal case is unsustainable. He has also pointed out that the second respondent pleaded guilty of the offences punishable under Sections 279, 337 and 338 of the IPC in the said case. According to the learned counsel,

in the said circumstances, the claim petition should have been allowed permitting him to recover the compensation from the third respondent.

5. It is settled that in a claim petition under Section 166 of the Motor Vehicles Act, the question of negligence will have to be decided by the Tribunal based on the materials on record, independent of the finding as to the negligence in the criminal proceedings initiated in connection with the accident. True, the documents such as the first information report, the final report, etc. in the criminal proceedings can also be considered in the matter of arriving at a finding on the question of negligence. In the instant case, though the claimant contended that the accident occurred on account of the negligence of the second respondent, he has not adduced any evidence in support of the said case. The third respondent, who contended that the accident occurred on account of the negligence of the claimant as well as the second respondent, has also not adduced any evidence. The fact

that the claimant sustained injuries in the motor accident is not in dispute. As such, the provision of law invoked by the claimant, viz., Section 166 of the Motor Vehicles Act, being a benevolent provision intended for the benefit of the victims of motor accidents, I am of the view that the claimant shall be given yet another opportunity to establish his case.

6. In the result, the impugned award is set aside. The Tribunal is directed to decide the claim petition afresh after affording the claimant an opportunity to adduce further evidence in the matter. The parties shall appear before the Tribunal on 15.6.2015.

The appeal is allowed as above.

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

KVS/-

// true copy //

PA TO JUDGE