

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

MACA.No. 1113 of 2008 ()

(AGAINST THE AWARD IN OPMV 1453/2002 of M.A.C.T., PERUMBAVOOR DATED 26-02-2008)

APPELLANTS/PETITIONERS:

1. MARY SEBASTIAN, W/O. LATE K.S. SEBASTIAN,
KANJIRATHINKAL HOUSE, CHENGAMANAD.

2. K.C. SEBASTIAN, S/O. CHERIAN -DO-

3. ROSEBELL, D/O.LATE K.S. SEBASTIAN, -DO-

4. ANUROSE, D/O. LATE K.S.SEABASTIAN, -DO-

5. ANTONY, D/O.LATE K.S. SEBASTIAN, -DO-

BY ADVS.SRI.V.K.GOPALAKRISHNA PILLAI
SRI.GOPAKUMAR G. (ALUVA)

RESPONDENTS/RESPONDENTS 1 TO 3 IN O.P(MV:

1. ACHUTHAN NAIR.ETC.
THURUTHUSSERY, MEKKAD.P.O, ATHANI
PIN-85.

2. RAJESH, S/O. KUNJU, KURAVAPARAMBIL,
POIKKATTUSSERY, NEDUMBASSERY, PIN-683578.

3. THE UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, KAP, COMMERCIAL CENTRE
R.S. ROAD, ALUVA, PIN - 683 101.

R3 BY ADV. SRI.A.A.MOHAMMED NAZIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.**

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M.A.C.A.No.1113 OF 2008
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Dated this the 17th November, 2015

JUDGMENT

Anil K. Narendran , J.

The appellants are additional claimants 2 to 6 in O.P(MV)No. 1453 of 2002 on the file of the Motor Accidents Claims Tribunal, Perumbavoor. They are the legal heirs of one K.S.Sebastian who was the original claimant before the Tribunal. The said petition was filed under Section 166 of the Motor Vehicles Act claiming compensation for the injuries sustained by the original claimant in a motor accident occurred on 01.02.2002. During the pendency of the claim petition the original claimant died and his legal heirs, the appellants herein, were impleaded as Addl. Claimants 2 to 6. The Tribunal, by the impugned award dismissed the claim petition holding that the claimant failed to establish the cause of accident and as such, they are not entitled to get any compensation as prayed for. It is aggrieved by the award

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passed by the Tribunal, the appellants are before this Court in this appeal.

2. We heard the arguments of the learned Counsel for the appellants and also the learned Counsel appearing for the third respondent Insurer.

3. The learned Counsel for the appellants would submit that the finding of the Tribunal that the claimants failed to prove the cause of accident and as such, they are not entitled to get any compensation as prayed for, is without any legal basis. Per contra, the learned counsel for the third respondent Insurer would contend that the aforesaid finding of the Tribunal is perfectly within the four walls of law and no interference is warranted.

4. From the pleadings and materials on record it is seen that the claim petition was filed before the Tribunal on an averment that while the original claimant was riding a motor cycle bearing registration No.KL.7/Y-7885 from Athani to Chengamanad on 01.02.2002, a mini lorry bearing registration No.KL.7/AA.8980, owned by the first respondent and driven by the second respondent, in a rash and negligent manner came from the opposite direction and hit the motor cycle as a result of

which the original claimant lost control and his forehead forcibly hit against a concrete post on the side of the road resulting serious injuries. The third respondent is the insurer of the mini lorry. The original claimant was admitted in the Little Flower Hospital, Angamaly as an inpatient from 01.02.2002 to 04.03.2002.

5. Before the Tribunal, the first and second respondents remained ex parte. The third respondent Insurer filed a written statement contending that the original claimant sustained injuries not as alleged in the claim petition and that no such road accident occurred on 01.02.2002 involving the mini lorry bearing No.KL.7/AA.8980. The third respondent contended that the original claimant sustained serious injuries due to rash and negligent driving of the motor cycle. When the motor cycle reached the spot of accident, it hit against a post causing injuries to the original claimant. The third respondent also contended that the original claimant being a Police Constable put up the case of a motor accident and based on concocted documents filed the claim petition before the Tribunal.

6. Before the Tribunal, P.Ws. 1 to 7 were examined on the side of the claimants and Exts.A1 to A20 were marked. After considering the evidence on record, the Tribunal came to the conclusion that the accident occurred not as alleged in the claim petition.

7. On perusal of the materials on record, we find that on the date of the accident, a crime was registered as Crime No. 68 of 2002, which is evident from Ext.A1 copy of FIR. Ext.A2 is the final report in that crime. Ext.A3 is the scene mahazar prepared on 02.02.2002. A reading of Ext A3 would show that, the presence of mini lorry involved in the accident is not seen mentioned in the scene mahazar. However, Ext.A5 report (though dated 23.03.2002) states the damage caused to the said vehicle and Ext.A6 is the AMVI Report in respect of the motor cycle in question. Ext.A7 is the discharge summary issued from the LF hospital, which would show that the original claimant was an inpatient there for nearly four months. The treatment which was received by the claimant at different hospitals are discernible from Exts. A8 to A10 (case summary, treatment

certificate and medical certificate respectively). Ext.A11 is the disability certificate issued from the LF hospital. During the pendency of the claim petition, the claimant died though not due to the injuries sustained in the accident.

8. On an overall evaluation of the documents on record, we find that the damages sustained to the vehicles involved in the accident are borne out from the documents on record. Similarly, the injuries sustained by the original claimant is also revealed from the medical records. The crucial issue that has to be decided in this case is as to the cause of accident, whether it was as stated in the claim petition filed by the claimant or as contended by the third respondent Insurer. A finding on the said issue can be made only on the basis of oral evidence adduced by both sides. Both sides have not chosen to adduce any oral evidence on the cause of accident. In that view of the matter, in the absence of any reliable materials, the only course open to this Court is to remand the matter to the Tribunal for fresh consideration, for affording an opportunity to both sides to adduce oral as well as documentary evidence to prove the cause

of accident.

9. In the result, the impugned award passed by the Tribunal is set aside and the matter is remanded to the Tribunal for fresh consideration, as directed above. The parties shall appear before the Tribunal on **28.12.2015**. Considering the fact that the claim petition is of the year 2002, we deem it appropriate to direct the Tribunal to dispose of the same as expeditiously as possible, at any rate, within a period of four months from the date of appearance of parties.

Registry shall return the LCR to the Tribunal forthwith.

**P.R. RAMACHANDRA MENON,
JUDGE**

**ANIL K. NARENDRAN,
JUDGE**