

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

MACA.No. 1404 of 2008 ()

AGAINST THE AWARD IN OPMV 539/2001 of MACT, THRISSUR

APPELLANT/PETITIONER:

VISWAMBHARAN, S/O AYYAPPAN
EDAPPULLY HOUSE, LALOOR, P.O.ELTHURUTH
THRISSUR DISTRICT.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS:

1. SUDHEESH, S/O CHANDRASEKHARAN
ANGOOR HOUSE, PEECHI P.O., THRISSUR DISTRICT.

2. NATIONAL INSURANCE CO.LTD.,
DIVISIONAL OFFICE, THRISSUR.

3. JOSE, KONDOOTH HOUSE,
THUMBUR, KADUPPASSERY VIA, IRINJALAKUDA.

R2 BY ADV. SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1404 OF 2008

Dated this the 30th day of June, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the claimant in O.P.(MV)No.539/2001 on the file of the Motor Accidents Claims Tribunal, Thrissur. The claim petition was dismissed by the Tribunal. The case of the appellant is that he met with a motor vehicle accident on 29.11.1999 at 8 a.m. It is the case of the appellant that he was a pedestrian. While so, a car bearing Reg.No.KL 8-6764 came and hit against the appellant and in that accident, he sustained fracture injuries . It is the case that he was taken to the Medical College Hospital, Thrissur and was treated as inpatient.

2. The case of the Insurance Company is that the case put forward by the appellant is not correct. They are denying the accident. The case of the appellant is that he is a professional commercial artist and injuries sustained by him is a displaced fracture of right radius. It is also brought to our notice that even though the accident occurred on

29.11.1999, he was treated as inpatient from 6.12.1999 to 23.12.1999.

It is also brought to our notice that there is correction in the wound certificate and it appears that the case of RTA is brought on record only on a later point of time. It is the submission by the learned counsel for the Insurance Company that at the time of admission in the hospital, the case of the appellant was only that the injuries sustained by a fall.

3. In this case we perused the records in detail. Surely the records contains the copy of the FIR as well as the police charge. There is also scene mahazar. The final report, which is marked as Ext.A5 before the Tribunal, shows that after a thorough investigation, police charge sheeted the first respondent in the petition, who was the driver of the vehicle at the time of the accident. There is also Ext.A8 series bills produced by the appellant. Among the said bills, a receipt from the Hospital Development Committee dated 1.12.1999 is also seen produced. It is an indication that he was in the hospital on that date. Thus, what comes out is that the case of the appellant that after the accident he went to the hospital for treatment need not be doubted. There is also evidence to the effect that he was treated as inpatient in

the hospital from 6.12.1999 to 23.12.1999.

4. In the decision of this Court in ***New India Assurance co. Ltd. v. Pazhaniammal (2011 (3) KLT 648)***, it has been held as follows :

“ Prima facie, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the indictee. If any one of the parties do not accept such charge sheet, the burden must be on such party to adduce oral evidence. If oral evidence is adduced by any party, in a case where charge sheet is filed, the Tribunals should give further opportunity to others also to adduce oral evidence and in such a case the charge sheet will pale into significance and the dispute will have to be decided on the basis of the evidence.”

5. Thus, when there is no contra evidence to show that the case put forward by the appellant is not correct or truthful and the case of the appellant has to be accepted. It can be concluded that the injury sustained to the appellant is in a motor vehicle accident occurred on 29.11.1999. Thus the second respondent who is the insurer of first respondent is liable.

6. The next point to be considered is in respect of the injury. The appellant sustained displaced fracture of right radius. He was in the hospital from 6.12.1999 to 23.12.1999. According to the appellant, he is an artist by profession who is having an income of more than Rs.4,500/-. The accident occurred in the year 1999. But the same time we have to take into consideration the fact that the appellant is a professional commercial artist. It will be only just and proper to take an income of Rs.3,500/- per month for the assessment purpose.

7. Considering the duration of inpatient treatment and the nature of the injuries sustained, the compensation is refixed as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earnings	14000 (3500 x 4)
Transportation	1000
Extra nourishment	1700
Medical expenses	1530
Bystander's expenses	2550
Pain and suffering	25000
Disability	63000 (3500 x 12 x 15 x 10%)

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of amenities	20000
Total	128780 Rounded off to ₹128,800/- (Rupees one lakh twenty eight thousand eight hundred only)

8. The accident occurred in the year 1999. Surely, the Tribunal dismissed the application. That is the reason why the appellant approached this Court. Considering the totality of the case, it will be only just and proper to grant interest @ 7.5% from the date of petition. The second respondent shall deposit the amount within three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.