

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

MACA.No. 2527 of 2010 ()

OPMV 1035/2004 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, THALASSERY

APPELLANT/PETITIONER :

**PAITHALEN ROSY, W/O.BABU,
AGED 49 YEARS, NEAR R.C.CURCH, MADAI
P.O.PUTHIYANGADI, KANNUR DISTRICT.**

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS/RESPONDENTS :

- 1. T.A.MUHAMMED SHAREEF, S/O.P.C.MOOSA,
T.A.HOUSE, P.O.MATTOOL, KANNUR DISTRICT.**
- 2. VALIYA VALAPPIL GAFOOR,
AGED 33 YEARS, S/O.ABDUL AZEEZ, MATTOOL AMSOM
NEAR R.C.CHURCH, P.O.MATTOOL, KANNUR DISTRICT.(DELETED)**

DELETED :

**RESPONDENT NO. 2 IS DELETED FROM THE PARTY ARRAY AT THE RISK
OF APPELLANT UNDER ORDER DT 7/11/2013 IN IA NO. 2896/13 IN
MACA 2527/2010.**

- 3. UNITED INDIA INSURANCE CO.LTD.,
KANNUR, PIN-670 001.**

R3 BY SRI JOHN JOSEPH VETTIKKAD

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

M.A.C.A.No.2527 of 2010

Dated this the 10th day of June, 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 in dismissing the claim petition.

2. The case of the claimant is that she sustained injuries in the accident took place on 2.3.2004 while getting into a jeep bearing Reg.No.KL-13/D 3311 on account of the negligence of the driver of the said vehicle. The owner and driver of the vehicle bearing Reg.No.KL-13/D 3311 were arrayed as respondents 1 and 2 in the claim petition. The third respondent in the claim petition is the insurer of the said vehicle. The first and second respondents remained ex-parte. The contention of the third respondent was that the jeep bearing Reg.No. KL-13/D 3311 was not insured with them.

3. The claimant had not tendered any oral evidence in the matter. Instead, she produced a few documents which were marked in the proceedings as Exts.A1 to A3. Though the third

respondent took the stand that the vehicle bearing Reg.No.KL-13/D 3311 was not insured with them, they also produced a few documents and the same were marked in the proceedings as Exts.B1 to B3. Among the documents produced by the claimant, Ext.A1 is the First Information Report in the crime registered in connection with the accident in which the claimant sustained injuries. Ext.A2 is the Accident Register cum Wound Certificate prepared by the doctor who examined the claimant immediately after the accident. Ext.A3 is the discharge card issued to the claimant from the Academy of Medical Science Hospital, Pariyaram, Kannur. Among the documents produced by the **third respondent**, Ext.B1 is the petition claimed to have been given by the claimant to the police on 4.3.2004. Ext.B2 is the final report of the police in the crime registered in connection with the accident and Ext.B3 is the copy of the private complaint submitted by the claimant.

4. The Tribunal found that while the registration number of the vehicle involved in the accident was shown in Ext.A1 FIR and Ext.B3 private complaint as KL-13/D 3311, the same was shown in Ext.B2 police charge as KL-13/F 3311. The Tribunal

also found that the name of the driver was shown in the First Information Report as Shafi, while his name was shown in the claim petition as Valiyaveettil Gafoor. The Tribunal further found from Ext.B1 that the version of the claimant in Ext.B1 as to the cause of the accident was that she fell down on the road by hitting on a stone while attempting to enter into the jeep. On the basis of the said findings, the Tribunal took the view that the materials on record are not sufficient to hold that the claimant sustained injuries in the accident as alleged in the claim petition. Consequently, the claim petition was dismissed.

5. Heard the learned Counsel for the appellant and the learned Counsel for the third respondent.

6. The learned Counsel for the appellant pointed out that in Ext.A2 which was the earliest document prepared after the accident, the cause of the accident is shown as "Alleged Road Traffic Accident". According to the learned counsel, the Tribunal has not considered the said vital aspect while holding that the claimant has not established the case set up in the claim petition. The learned counsel for the appellant also pointed out that the information gathered by the claimant immediately after the

accident as to the number of the vehicle involved in the accident and the particulars of the driver were not correct and it is on account of the said reason, the number of the vehicle and the particulars of the driver were shown wrongly in the First Information Report and also in the private complaint. It was further pointed out by the learned counsel for the appellant that the number of the vehicle involved in the accident is KL-13/F 3311. He also pointed out that the claimant had filed I.A No.3809/2010 to correct the mistake in the claim petition as to the number of the vehicle by way of an amendment and the Tribunal dismissed the said application incorrectly.

7. It is seen that the claim petition was disposed of based on the admitted documents produced by the parties. According to me, in a case like this, where the very occurrence of the accident itself was challenged, the Tribunal should have required the parties to adduce oral evidence. That apart, as noticed above, the main reason for dismissing the claim petition was that the registration number of the vehicle involved in the accident and the name of the person who was driving the vehicle at the time of accident were not tallying with the said particulars

entered in the documents produced by the parties. Though the case of the claimant that she sustained injuries in a motor accident was denied by the contesting respondent, the fact that she sustained injuries on the same day, while attempting to enter into the jeep is not denied. The information gathered by the person who sustained injuries in an occurrence like the instant case, as to the particulars of the vehicle and the driver etc. may or may not be correct, for, the priority of such persons at that point of time would be to avail treatment for the injuries at the earliest opportunity. The injured will be able to gather true and correct information only on completion of the investigation in the case registered in connection with the accident. As such, merely for the reason that the information furnished in the claim petition as to the number of the vehicle involved in the accident and the particulars of the person who was driving the vehicle at the time of the accident were incorrect, the claim petition should not have been dismissed. If it is established that it is on account of a mistake, such information was furnished wrongly in the claim petition, the Tribunal should permit the claimant to carry out appropriate amendments and implead proper parties in the claim

petition. The explanation offered by the claimant that it is on account of her inability to collect correct information as to the number of the vehicle and the particulars of the driver of the vehicle, the mistakes referred to by the Tribunal have been occurred appears to be plausible and convincing. The other reason stated by the Tribunal for dismissing the petition was that in Ext.B1 statement, the claimant had stated that she sustained injuries on account of the fall on the road while attempting to enter into the jeep. Ext.B1 is only a previous statement of the claimant. Ext.B1 is not seen proved. In so far as the claimant has not adduced any oral evidence, there was no occasion for her to offer an explanation in respect of the said statement. As such, on a consideration of the entire materials on record, I am of the view that the claim petition is to be decided afresh by the Tribunal, after affording the claimant an opportunity to carry out appropriate amendments to the claim petition, implead necessary parties in the claim petition and adduce oral evidence in support of the claim.

8. In the result, the appeal is allowed, the impugned award is set aside and the claim petition is remitted to the

Tribunal for fresh disposal, after affording the claimant an opportunity to carry out appropriate amendments to the claim petition, implead necessary parties in the claim petition and adduce oral evidence in support of the claim. Since I have taken the view that the claimant was entitled to file an application before the Tribunal to carry out appropriate amendments in the claim petition, the order on I.A.No.3809 of 2010 is also set aside to enable the Tribunal to pass fresh orders on the same.

P.B.SURESH KUMAR, JUDGE.

smm