

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

MACA.No. 1859 of 2008 ()

**AGAINST THE AWARD IN OPMV 1274/2003 of MOTOR ACCIDENTS CLAIMS TRIBUNAL,
PERUMBAVOOR DATED 30-05-2008**

APPELLANT(S)/PETITIONER:

**GEORGE.U.P, S/O. POULOSE,
AGED 57, URAKADAN HOUSE, MALAYATOOR.P.O.**

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

RESPONDENT(S):

- 1. JIJO.P.Y, S/O. YACOB,
PANACHIKKAL HOUSE, MALAYATTOOR.P.O, KALADY VIA.**
- 2. RAVEENDRAN, PATHAPPILLY HOUSE,
NEELESWARAM, P.O. KALADY.**
- 3. UNITED INDIA INSURANCE CO. LTD.,
2ND FLOOR, SOUTHERN BLOCK, VADAKKANETHIL TOWERS
PRIVATE BUS STAND ROAD, PERUMBAVOOR - 683 542.**

R3 BY ADV. SRI.S.ARUN RAJ

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VPV

P.B.SURESH KUMAR, J.
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M.A.C.A.No.1859 of 2008
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Dated this the 13th day of January, 2015

JUDGMENT

The claimant in an application for compensation before the Motor Accident Claims Tribunal has come up in this appeal challenging the dismissal of the application.

2. The case of the claimant before the Tribunal was that on 8.3.2003, at about 1.30 p.m., while he was travelling through the Malayattoor-Kalady public road in his motor cycle from east to west, the mini lorry driven by the first respondent came from behind and hit on his right side. According to him, on account of the collision, he was thrown to the road and sustained grievous injuries. He claimed a sum of Rs.70,000/- by way of compensation in the proceedings.

3. The first respondent, the driver of the mini lorry and the second respondent, the owner of the mini lorry remained exparte. The insurer of the mini lorry contested the application, contending that the accident occurred on account of the rashness and negligence on the part of the claimant himself and therefore, he is

not entitled to any compensation.

4. The Tribunal, on an elaborate consideration of the materials on record, found that the accident occurred on account of the negligence of the claimant and consequently, dismissed the application. In the matter of holding that negligence of the claimant had contributed the accident, the Tribunal noticed that the claimant had not deposed before the Police that he was travelling in the east-west direction. The Tribunal had also noticed that the claimant had not offered any explanation for the damage caused to the mini lorry on its right side. The Tribunal had further noticed that RW1, the Head Constable of Police, who conducted the investigation of the crime registered in connection with the accident, at the first instance, has deposed that two eye-witnesses of the occurrence had stated to him that the claimant was coming from west to east at the time of the accident. It is seen that on the basis of the said facts taken note of by the Tribunal, it came to the conclusion that the claimant was coming on the wrong side. It is on the basis of the said factual finding, the Tribunal found that the accident occurred on account of the negligence of the claimant and dismissed the application for compensation on that basis.

5. Heard the learned counsel for the appellant/claimant as also the learned counsel for the third respondent/insurer.

6. The fact that the claimant sustained injuries in the accident took place on 8.3.2003, as alleged by him in the application for compensation is not in dispute. The dispute is only as to whether the contention of the insurer that the accident occurred on account of the negligence of the claimant is correct or not. As noticed above, the Tribunal came to the conclusion that the negligence of the claimant had contributed the accident, solely based on its finding that the claimant was on the wrong side of the road.

7. On an examination of the entire materials on record, I am of the view that the findings of the Tribunal that the claimant was travelling from west to east at the time of accident and that he was on the wrong side of the road cannot be accepted. Ext.A2 scene mahazar would indicate that the road at the relevant point had a width of 5.5 meters. Ext.A2 scene mahazar also indicates that the place of occurrence was 70 cms. north from the southern tar end of the road. It is thus evident that the accident took place on the southern side of the road. If as a matter of fact, the claimant was coming from west to east as contended by the respondent, he would not have sustained injuries on his right hand. Ext.A5 wound certificate indicates that the claimant had sustained lacerated wounds on his right hand. That apart, Ext.X1(a) is not the first information statement of the claimant as noticed by the Tribunal.

It is only a statement recorded by the Police under section 161 of the Code of Criminal Procedure. A statement under Section 161 of the Code of Criminal Procedure is the substance of the answers given by the witness and reduced into writing by the police officer to the specific questions put to the witness. Section 161(3) of the Code of Criminal Procedure confers a discretion to the police officer to record the statement made by the witness which is relevant according to him in the context of the investigation conducted by him. There is nothing on record to indicate that the claimant was asked specifically as to the direction in which he was proceeding at the time of accident and that he did not give any answer to that question. In the absence of any material to indicate that a specific question was put to the claimant by the police officer as to the direction in which he was proceeding at the time of accident in the course of the investigation, the claimant cannot be found fault with for the absence of any statement from him in the statement recorded by the police under Section 161 of the Code of Criminal Procedure. Coming to the observation made by the Tribunal as to the damage noticed on the right side of the mini lorry, there is nothing on record to indicate that the said damage was caused to the vehicle in the accident which is the subject matter of this case. Accordingly, the damage on the right side of the mini lorry noticed

by the Tribunal is not of any significance in this matter. True, RW1, the Head Constable who conducted investigation of the case registered in connection with the accident has stated before the Tribunal that two of the witnesses questioned by him have stated to him that the claimant was proceeding from west to east at the time of the accident. The said evidence tendered by RW1 cannot be relied on as to establish that the claimant was proceeding from west to east at the time of accident. The evidence of RW1 would only show that two persons have given statement to RW1 in the course of investigation that the claimant was proceeding from west to east at the time of accident. RW2, the Sub Inspector of Police, who completed the investigation and submitted the final report had stated in the final report that the claimant was proceeding from east to west at the time of accident. Further, an independent witness was examined by the claimant as PW2 before the Tribunal, who had categorically deposed that the claimant was proceeding in the east - west direction at the time of accident. As observed earlier, RW2, the Sub Inspector of Police who completed the investigation of the crime and submitted the final report was though cross-examined by the respondents, nothing was brought out in his evidence to show that the conclusions arrived at by him in Ext.A6 final report is incorrect. Above all, even assuming that the claimant was

proceeding from west to east at the time of accident, that by itself is not sufficient to hold that he was negligent.

8. On an appraisal of the entire materials on record, I am of the view that the finding of the Tribunal that it is on account of the negligence of the claimant that the accident occurred is incorrect and unsustainable. I hold that the materials on record indicate beyond doubt that the accident occurred on account of the negligence of the first respondent. In so far as none of the remaining issues arose for consideration in the matter was considered by the Tribunal, I am of the view that the Tribunal has to pass an award after determining the quantum of compensation payable to the claimant.

In the result, the impugned award is set aside and the matter is remitted to the Tribunal for deciding the quantum of compensation payable to the claimant and other related issues. The parties are directed to appear before the Tribunal on 16.2.2015.

Sd/-

**P.B.SURESH KUMAR
JUDGE**

vpv