

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

MACA.No. 2250 of 2008 ()

AGAINST THE AWARD IN OPMV 574/2002 of M.A.C.T.,KOZHIKODE DATED 16-10-2007

APPELLANT/PETITIONER IN OP MV:-

ZAINUAL ABID P.C.,
AGED 22 YEARS, S/O IBRAHIM
RESIDING AT PALAKKAVALAPPIL HOUSE, MUTTANOOR P.O.
MANGALAM (VIA), MALAPPURAM.

BY ADV. SRI.AVM.SALAHUDEEN

RESPONDENT/RESPONDENTS IN OP (MV)

- * 1. K.T. MUHAMMED BASHEER, AGED 29 YEARS,
S/O MUHAMMED, RESIDING AT KARINKAPPARA
THARAYENGAL HOUSE, THIRUNAVAYA, MALAPPURAM. (DELETED)
2. THE NEW INDIA ASSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE, SILVER PLAZA BUILDING
INDIRA GANDHI ROAD, KOZHIKODE.

*R1 IS DELETED FROM THE PARTY ARRAY, AT THE RISK OF THE APPELLANT
AS PER ORDER DATED 27.2.2015 IN I.A.NO.737 OF 2015.

R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.2250 of 2008

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Dated this the 2nd day of July, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(MV).No.574 of 2002 on the file of the Motor Accidents Claims Tribunal, Kozhikode. The appellant instituted O.P.(MV).No.574 of 2002 before the Motor Accidents Claims Tribunal, Kozhikode on 13.3.2002 claiming compensation for the injuries sustained by him in a motor accident that took place at about 9.30 am on 30.8.2001. He had in the claim petition averred that while he was riding a bicycle from Kainikkara to Ajithapadi, a motor car bearing registration No.KL 10/E 7347 owned and driven by the first respondent and insured by the second respondent collided with the bicycle and in that accident he sustained serious injuries. He had in paragraph 28 of the claim petition averred that immediately after the accident he was taken to Government Hospital, Tirur and on the same day referred to Medical College Hospital, Kozhikode, from where, after undergoing treatment as an in-patient, he was discharged on 10.9.2001. He had also averred that thereafter he was again admitted as an in-patient in Medical College Hospital, Kozhikode on 1.11.2001 and he underwent treatment there till 13.11.2001 and that even now

the treatment is continuing at Medical College Hospital, Kozhikode. He had also averred that on account of the accident he is completely bed ridden and has not been able to attend classes for the past six months. The claimant had also averred that the accident took place on account of the rash and negligent driving of the motor car by the first respondent. He had in the claim petition claimed the sum of ₹2,00,000/- as compensation under various heads.

2. The records disclose that the notice issued to the first respondent, the owner-cum-driver of the motor car, from the Motor Accidents Claims Tribunal on 13.6.2002 with the hearing date fixed as 2.12.2002 was returned with the endorsement 'not known'. The notice issued to the second respondent was served and the second respondent thereupon entered appearance through counsel. The second respondent filed a written statement dated 16.2.2004 wherein it admitted the fact that the motor car bearing registration No.KL 10/E 7347 was insured with it. The insurer denied the claimant's allegation that the accident took place on account of the rash and negligent driving of the motor car by the first respondent and contended that the accident took place only on account of the negligence of the claimant and therefore, he is not entitled to any compensation. The insurer also contended that the compensation claimed is exorbitant and excessive.

3. Before the Tribunal no oral evidence was adduced on both sides. On the side of the claimant Ext.A1 series reference cards/treatment certificates and medical certificates and Ext.A2 series of medical bills were marked. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the rash and negligent driving of the motor car by the first respondent. In coming to the said conclusion, it relied on the certified copy of the FIR produced by the claimant. The Motor accidents Claims Tribunal thereafter held that there are corrections in Ext.A1 series of reference cards and therefore, no reliance can be placed on the said documents. For that reason and also for the reason that the claimant who was a minor boy aged 15 years on the date of the accident has not entered the box, the claim petition was dismissed. The claimant has, aggrieved thereby, filed this appeal.

4. We heard Smt. Divya A.D, learned counsel appearing for the appellant and Sri. Thomas Mathew Nellimootil, learned counsel appearing for the second respondent. We have also gone through the pleadings and the materials on record. The claim petition discloses that the claimant was a minor as on the date on which the accident took place, viz; 30.8.2001 and also on the date on which the claim petition was filed, viz; 13.3.2002. The records disclose that though

notice was issued to the first respondent, the owner-cum-driver of the car, it was returned with the endorsement 'not known'. Thereafter fresh steps were not taken to serve notice on the first respondent. He was also not set ex-parte. The second respondent insurer entered appearance and filed a written statement wherein it admitted the fact that the motor vehicle owned by the first respondent was duly insured with it. The insurer did not seriously dispute the fact that the claimant had sustained injuries in a motor accident. The Motor Accidents Claims Tribunal held that the accident took place on account of the rash and negligent driving of the motor car by the first respondent, relying on the certified copy of the FIR in Crime No.471 of 2001 of Tirur Police Station. The Tribunal however non suited the claimant on the ground that he had not entered the box and there are corrections in Ext.A1 series of reference cards. The Tribunal held that it suspects that the reference cards produced by the claimant are fabricated and that the treatment certificate produced is one issued by a doctor who had no occasion to treat the claimant.

5. In the first among the reference cards issued from the Medical College Hospital, Kozhikode, though initially the name of a doctor was entered against the name of 'unit head', it was scored off and the name of another doctor was entered. The reference cards

however unequivocally state that the claimant was admitted as an in-patient on 31.08.2001 and discharged on 10.09.2001. The accident in the instant case took place on 30.08.2001. The claimant had stated that he was initially taken to General Hospital, Tirur and from there referred to Medical College Hospital, Kozhikode. The reference cards also disclose that the claimant had undergone treatment in Medical College Hospital, Kozhikode. The claimant had averred that after discharge on 10.09.2001, he was again admitted as an in-patient on 1.11.2001 and was discharged on 13.11.2001. The said statement is also proved by the entries in the second among the reference cards. In the first among the reference cards, there is also a statement to the effect that on the second occasion the claimant was not willing to be admitted as an in-patient. As a minor boy, he would have expressed reluctance to be admitted in the hospital. The documents produced by the claimant prove the fact that the claimant had undergone treatment as an in-patient in Medical College Hospital, Kozhikode during the period from 31.08.2001 to 10.09.2001 and during the period from 1.11.2001 to 13.11.2001. A mere look at the documents is sufficient to hold that the conclusion arrived at by the Tribunal that Ext.A1 series reference cards are fabricated documents, cannot be sustained.

6. The claimant had besides producing the reference cards

produced the treatment certificate issued by the Medical Officer, Medical College Hospital, Kozhikode to show that he had undergone treatment during the period from 31.08.2001 to 10.09.2001. The said certificate also discloses the in-patient number allotted to the claimant, viz; 48941, which finds a place in both the reference cards. The claimant had also likewise produced a medical certificate dated 03.12.2001 issued by Dr. Jagadish Menon attached to the Medical College Hospital, Kozhikode, wherein he had certified that the claimant, a student requires absence from classes for a period of 12 weeks with effect from 31.08.2001 on account of the injuries sustained by him.

7. In the light of the overwhelming documentary evidence available on record as also the very finding entered by the Tribunal itself that the insurer does not dispute the accident, we are of the opinion that the Tribunal committed an error when it held that the claimant had not proved that he had sustained injuries in a motor accident. The finding on issue No.2 runs counter to the finding entered by the Tribunal on issue No.1. In any view of the matter, the Motor Accidents Claims Tribunal ought to have in our opinion afforded the claimant an opportunity to clarify the doubts if any the Tribunal had as regards Ext.A1. The Tribunal has also held that though the claimant

had filed I.A.No.3348 of 2003 for obtaining a certificate from the Medical Board and that application was allowed, further steps have not been taken. I.A.No.3348 of 2003 was filed on 28.08.2003. Though the records disclose that said application was allowed by order passed on the same day, the Motor Accidents Claims Tribunal had not passed an order as required under rule 387 of the Kerala Motor Vehicles Rules, 1989. It had merely allowed the application by the following order : "*No counter allowed*". There was no direction by the Tribunal to the Superintendent, Medical College Hospital or any other Medical Officer to examine the claimant and to issue a disability certificate indicating the degree and extent of the disability, if any sustained by the claimant as a result of the accident. Such being the situation, we are of the considered opinion that the impugned award cannot be sustained.

We accordingly allow the appeal, set aside the impugned award and remand O.P(MV) No.574 of 2002 to the Motor Accidents Claims Tribunal, Kozhikode for fresh trial and disposal. The appellant and the second respondent shall appear in the Motor Accidents Claims Tribunal through counsel on 10.08.2015. The Motor Accidents Claims Tribunal shall thereupon issue notice to the first respondent in the claim petition and dispose of the claim petition afresh after affording both

sides an opportunity to adduce evidence oral and documentary and the claimant an opportunity to be examined by a Medical Board to be constituted by the Superintendent, Medical College Hospital, Kozhikode. No costs.

**P.N.RAVINDRAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

kp/-