

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

MACA.No. 3002 of 2008 ()

AGAINST THE AWARD IN OPMV 1010/2003 of M.A.C.T., PALAKKAD
DATED 16-06-2008

APPELLANT(S)/RESPONDENTS:

1. M.MURALI, S/O. LAKSHMIKUTTY,
6/152, MARUTHAMKODE HOUSE, SEKHARIPURAM,
PALAKKAD.

2. M.MURALI, S/O.MADHAVAN NAIR,
PRASANNAM, KONGAPPADAM, AKATHATHARA,
PALAKKAD.

BY ADV. SMT.BINDU GEORGE

RESPONDENTS/PETITIONERS:

1. P.ANBALAGAN, S/O. PARIYAPPAN (DIED),
RAILWAY QUARTERS NO.418/ SOUTH COLONY,
PALAKKAD DISTRICT.

2. VADIVI, W/O.LATE ANBALAGAN,
RAILWAY QUARTERS NO.418/D, KALLEKULANGARA,
AKATHATHARA AMSOM/DESOM, PALAKKAD TALUK.

3. MANIVARNAN, S/O.LATE ANBALAGAN,
RAILWAY QUARTERS NO.418/D, KALLEKULANGARA
AKATHATHARA AMSOM DESOM, PALAKKAD TALUK.

4. ANPUMANI, W/O.LATE ANBALAGAN,
RAILWAY QUARTERS NO.418/D, KALLEKULANGARA
AKATHATHARA AMSOM DESOM, PALAKKAD TALUK.

5. KEERTHIKA (MINOR), D/O.LATE ANBALAGAN,
REPRESENTED BY THE 2ND RESPONDENT HEREIN.

R1-R5 BY ADV. SMT.UMA GOPINATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 30-09-2015, ALONG WITH CROSS-OBJECTION
59/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

**M.A.C.A. No.3002 of 2008 &
Cross-Objection No.59 of 20015**

Dated this the 30th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

This is an appeal by the respondents 1 and 2 in O.P.(MV) No.1010/2003 on the file of the Motor Accidents Claims Tribunal, Palakkad, who are stated as the owner and driver, as arraigned before the Tribunal, of a scooter bearing Registration No.KL-9D/7519 which was involved in the accident, being aggrieved by the liability mulcted upon their shoulders, to satisfy the award amount (obviously for the reason that the vehicle was not covered by a valid insurance policy).

2. The gist of the factual position reveled from

the appeal is that the original claimant by name 'P. Anbalagan' while proceeding along the road on a bicycle was knocked down by the scooter bearing Registration No.KL-9D/7519 on 11/3/2003 at about 6.45 p.m. causing injuries to him which, in turn, was sought to be compensated by filing the claim petition before the Tribunal. On receipt of the notice, the respondents, who are the appellants before this Court now, filed a joint written statement disputing the occurrence of the accident itself and also as to the identity of the vehicle. According to the appellants, the actual vehicle involved was bearing Registration No.KL-9/7867 which was having a valid insurance policy and pointed out that the claim petition was bad for non-joinder of necessary parties for not having impleaded the actual owner and the insurer of the said vehicle.

3. The evidence adduced before the Tribunal consists of Exts.A1 to A8 and Ext.B1 marked on the side of the respondents. In fact, Ext.B1 was a copy of

the document whereby the vehicle bearing Registration No.KL-9/7519 was caused to be forwarded for examination by the authorities of the Motor Vehicles Department under a letter issued by the Sub Inspector of Police; wherein an endorsement has been made by the authorities of the Motor Vehicles Department, to have the vehicle released. Placing reliance on the said document, it was contended that the actual vehicle involved in the accident was KL-9/7519 and not KL-9D/7519.

4. The said proposition mooted by the respondents was brushed aside by the Tribunal referring to the crystal clear position revealed from the police records, right from the beginning, as to the involvement of the vehicle having registration No.KL-9D/7519. It is also relevant to note that the appellants/respondents before the Tribunal did not choose to mount the box to substantiate the facts and figures, if the actual position was something else and that there was any mistake on the part of the police in

identifying the vehicle. Based on the available materials on record, the Tribunal arrived at the negligence on the part of the rider of the scooter and the liability was accordingly mulcted on the shoulders of the respondents before the Tribunal. It is seen that the original claimant, in the meanwhile, took his last breath because of 'renal failure' and his legal heirs were impleaded in the claim petition before the Tribunal. The compensation payable for the injuries sustained were worked out, granting a sum of ₹7,500/- towards loss of earning; ₹2,500/- towards transportation expenses; ₹1000/- towards extra-nourishment; ₹500/- towards damage to clothing; ₹2,000/- towards bystander's expenses; ₹15,000/- towards pain and suffering and a sum of ₹4,000/- towards loss of amenities. Thus, a total compensation of ₹32,500/- was directed to be satisfied with interest at the rate of 7.5% per annum from the date of petition i.e., 1/11/2003 till realisation and costs. This, in turn, is sought to be challenged in this appeal filed

by the respondents in the claim petition.

5. Years after admitting the appeal, the respondents/claimants approached this Court by filing Cross-objection No.59/2015, along with a petition to condone the delay of '2234 days'. The learned counsel for the appellants submits that the said delay stands condoned. The appellants contended that there is absolutely no merit or bona fides in the contentions put forward by the cross-objectors and that the death was in no way connected with the accident occurred on 11/3/2003.

6. This Court has perused the entire materials, including the lower court records received from the Motor Accidents Claims Tribunal, Palakkad. The pleadings and proceedings reveal that the award passed by the Tribunal was very much on the basis of the available materials on record and taking note of the extent of injuries sustained at the adverse consequences resulted therefrom. The original claimant was actually an employee of the Railways

and treatment was availed from the Railway hospital. The relevant heads have been considered and eligible extent of compensation has been awarded by the Tribunal. The liability of the respondents before the Tribunal has been fixed on the basis of the pleadings and the available evidence on record. It is also brought to the notice of this Court by the cross-objectors/respondents in the appeal that the scooter was being ridden at the relevant time without possessing a valid driving licence. The identity of the vehicle has been established based on the entries in the relevant police records and hence we do not find any reason to deviate from the course and proceedings. The fixation of negligence; identity of the vehicle and the quantum of compensation awarded by the Tribunal warrant no interference by this Court. We do not find any merit in the appeal and same is the position with regard to the belated cross-objection filed by the claimants. Absolutely no material has been produced either before this Court or

before the Tribunal to connect the death, to the accident occurred on 11/3/2003. There was no such case for the respondents/legal heirs of the deceased, who were brought in the party array when the proceedings were pending before the Tribunal.

In the above facts and circumstances, interference is declined and accordingly, this appeal as well as the cross-objection stand dismissed as devoid of any merit.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge