

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K. HARILAL

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

MACA.No. 3038 of 2008

AGAINST THE AWARD IN OPMV 587/2002 of MACT, ALAPPUZHA
DATED 10-09-2007.

APPELLANT(S)/PETITIONER IN THE O.P. (MV) :

V.P.UNNIKRISHNAN, S/O. PURUSHOTHAMAN,
VADAKKEATTUTHUVELI, WARD NO:X, PARAVOOR NORTH
PANCHAYATH, PUNNAPRA, ALAPUZHA DISTRICT.

BY ADV. SRI.M.R.SUDHEENDRAN

RESPONDENT(S)/RESPONDENTS IN THE O.P. (MV) :

1. MATHEW JOSE, PARTNER, M/S URAMBATH MATHAI
THARIATH & CO, OLD MARKET ROAD, ALWAYE.

2. BABY, S/O.VARGHESE, KACHELIVEETIL,
ASOKAPURAM, THYKATTUKARA VILLAGE, ALWAYE.

3. THE NATIONAL INSURANCE CO.LTD.,
REPRESENTED BY ITS BRANCH MANAGER, ALWAYE.

R3 BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 20-10-2015, THE COURT ON 09-11-2015
DELIVERED THE FOLLOWING:

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

M.A.C.A. No.3038 of 2008

Dated this the 9th day of November, 2015

JUDGMENT

Harilal, J.

The appellant is the petitioner and the respondents herein are the respondents in O.P.(MV) No.587/2002 on the files of the Motor Accidents Claims Tribunal, Alappuzha. The appellant filed the above O.P.(MV) claiming compensation for the damages caused to his car in a motor vehicle accident. The respondents 1 to 3 are the owner, driver and insurer of the lorry against which the car hit and sustained damages. According to the appellant, the accident, in which the car sustained damages, was caused by the negligent parking of

the lorry alone. So, he claimed a total compensation of Rs.1,35,309/- from the respondents.

2. The Tribunal tried the case along with O.P. (MV) Nos.1100/01, 1305/01, 1306/01, 1308/01, 1309/01, 1311/01, 1390/01 and 1395/01 and evidence was adduced in common. After evaluating Exts.A2, A29, A30, A32 and A34 and the oral evidence of P.Ws.6 and 7, the Tribunal found that the accident was caused proportionally by the negligence contributed by the rash and negligent driving of the car and the wrongful parking of the lorry. Thus, contributory negligence was fixed at the ratio of 70:30. The total loss caused to the appellant was fixed at Rs.50,000/- and awarded Rs.15,000/- as compensation to him. The apportionment of negligence and the inadequacy of the quantum of compensation determined by the court below are under challenge in this appeal.

3. According to the averments in the petition,

while three persons by names, deceased 'Suresh Babu', Venu and Anand were travelling in the car bearing registration No. KBE 277 driven by one 'Santhoshkumar' through Kollam - Thiruvananthapuram NH 47 and when the car reached Attingal, it hit on the back of the lorry bearing registration No.KL-7/U-2099 owned by the 1st respondent, driven by the 2nd respondent and insured with the 3rd respondent, which was parked on the side of the road and the accident was caused by the wrong parking of the lorry alone and the respondents are liable to compensate the appellant for the damages caused to the car.

4. Heard the learned counsel for the appellant. The learned counsel for the appellant advanced arguments contending that the Tribunal went wrong in apportioning the negligence, which caused the accident, in which the car sustained damages. According to the learned counsel, the accident was

caused by the wrongful as well as negligent parking of the lorry alone on the tarred portion of the road and there was no parking light or reflector on the lorry. Had the driver of the lorry parked the lorry in a place out of the road or out of the tarred portion of the road, the accident could have been avoided. So, the Tribunal went wrong in finding that the negligence contributed by the driver of the lorry is at 30% only and the driver of the car contributed at 70%, and the Tribunal ought to have found that the accident was caused by the negligent as well as wrongful parking of the lorry, by the driver of the lorry alone, and the driver of the car was not negligent in driving the car. So also, it is contended that the quantum of compensation determined by the Tribunal is inadequate and unreasonable and the deduction for depreciation of the vehicle is not justifiable.

5. In view of the submissions made at the Bar, the question to be considered is, whether the Tribunal

is justified in apportioning negligence which caused the accident between the drivers of both the vehicles and determining the quantum of compensation.

6. Going by the impugned common judgment, it is seen that admittedly, the lorry was parked on the side of the road, when the car was driven by the 2nd respondent in O.P.(MV) No.1100/2001 and hit on the back side of the lorry. The allegation of the appellant is that the lorry was parked taking a portion of the tarred road and there was no parking light or reflectors on the lorry. When a question was put to P.W.8, who had driven the vehicle, why didn't he stop the car on seeing the lorry, he answered that he did not see the lorry. From this answer, it can reasonably be presumed that the car was being driven by him with high speed, beyond his control. Admittedly, the place of accident is a place where the road was lying straight. So as rightly observed by the Tribunal, even if the lorry was wrongly parked in a negligent manner,

the driver of the car could have stopped the car immediately on seeing the lorry, if he was driving the car with a reasonable speed, within his control. Needless to say, the negligence contributed by the driver of the car, in causing the accident is more than of that of the driver of the lorry. Had he driven the car with a reasonable speed, care and caution, that can be expected from the an ordinary prudent driver, the accident could have been avoided.

7. The fact that the driver of the car stands acquitted in criminal cases registered against him for causing the accident will not absolve him from the tortuous liability. The Tribunal has jurisdiction and power to independently evaluate the evidence adduced before the Tribunal and to arrive at a proper finding as regards the cause of accident, notwithstanding the acquittal of the driver of the car in criminal cases. Moreover, in a criminal case he was acquitted on the basis of the evidence of P.Ws.1

to 3 in that case that they did not know the reason for the accident and they did not know the driver who was driving the car at the time of accident. Therefore, the Tribunal is justified in finding negligence on the part of the driver of the car, in causing the accident, notwithstanding, his acquittal in criminal cases registered against him. In the above analysis, the Tribunal is justified in apportioning negligence at 70:30 and there is no reason to interfere with the said finding.

8. Coming to the quantum of compensation, it is seen that the Tribunal has meticulously evaluated Exts.A2, A29, A30, A32 and A34 and determined the compensation on the basis of the said documentary evidence supported by the oral evidence adduced by P.Ws.6 and 7. The appellant, who was examined as P.W.6, himself stated that his car was the model of 1984 and he purchased it in 1997 and thus, at the time of accident, the car was of nearly 17 years old.

Certainly, the depreciation value also should have been taken as relevant factor while calculating the loss caused by damages. But, in Ext.A2, the Surveyor has not deducted any amount as depreciation value from the cost of spare parts, though the car was of 17 years old. So, the Tribunal is justified in deducting the depreciation value and there is no reason to interfere with the determination of the quantum of compensation also. Thus, all the contentions raised in the appeal will stand rejected.

This appeal is devoid of merits and is dismissed accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge

