IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 05TH DAY OF AUGUST 2020 / 14TH SRAVANA, 1942

MACA.No.2332 OF 2009

AGAINST THE AWARD IN OPMV 997/2003 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ALAPPUZHA

APPELLANT:

JAIM SEBASTIAN @ JOSEY
S/O.SEBASTIAN
THEKKEKKARA VEEDU, VAZHIPPADI JN.,,
KURUMBANADAM KARA, MADAPPALLY VILLAGE,,
CHANGANACHERRY TALUK.

BY ADVS.
SRI.C.M.TOMY
SRI.K.J.JOSEMON
SRI.MATHEW SKARIA

RESPONDENTS:

1 **ANILKUMAR**
S/O RAGHAVA PANICKER, PAYYAMPALLIL, NEDUMUDI,
ALAPPUZHA.

2 **SHAJIMON**
S/O. KESAVA KAIMAL, BHAGAVATHI PARAMBIL,
THEKKEKKARA P.O.,KUTTANAD TALUK, ALAPPUZHA.

3 **NATIONAL INSURANCE CO. LTD.**
ALAPPUZHA BRANCH, JYOTHI SUPER BAZAR,
THODUPUZHA.

R1 BY ADV. SRI.C.P.CHANDRASEKHARAN CALICUT
R1-2 BY ADV. C.P.CHANDRASEKHARAN (CALICUT)
R3 BY ADV. RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 05th day of August, 2020

The appeal is against the dismissal of the claim petition before the Tribunal. The allegation was that the appellant while riding a motor bike collided with a tipper lorry. In the claim petition it was alleged that the tipper lorry was driven in a rash and negligent manner. Annexure.A1 FIR was produced wherein the driver of the tipper lorry was the accused. However, the Tribunal looked into the scene mahazar to find that the motor bike was proceeding from west to east and the accident occurred on the southern side of the road. In fact, if the direction of the motor bike was from west to east he should have been on the northern side of the road, was the clear finding of the Tribunal.

2. Though the FIR was produced the applicant did not produce the charge sheet before the Tribunal. Further it is contended by the learned Standing

Counsel that O.P (MV) 994/2006, with respect to the same accident, was filed by the pillion rider against the appellant herein. This was separately tried since the pillion rider had a claim that the appellant was riding the motor bike negligently. The Tribunal found negligence on the appellant and awarded compensation also. The appellant has also referred to OP(MV) 994/2006 in the appeal, but not stated the result of the same. In such circumstance, there could be no negligence found on the tipper lorry.

Considering the entire circumstances, this Court is of the opinion that nothing survives in the appeal. Appeal Dismissed, without any order as to costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE.

jma/