



2025:KER:20619

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

TUESDAY, THE 11TH DAY OF MARCH 2025/20TH PHALGUNA, 1946

MACA NO. 708 OF 2014

**AGAINST THE ORDER/JUDGMENT DATED 31.07.2013 IN OPMV NO.1724
OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL.**

APPELLANT:

**SHAMSUDHIN,
AGED 66 YEARS,
S/O.KASIMKUNJU RAWTHAR, MARABA, T.C.2/1143 (1),
NEAR RAILWAY STATION, KAZHAKUTTAM.**

BY ADV SRI.R.T.PRADEEP

RESPONDENTS:

- 1 ANIL KUMAR V,
VISWA BHAVAN, N.H.ROAD, KAZHAKKOOTAM ROAD,
THIRUVANANTHAPURAM - 695 582.**
- 2 THE MANAGER,
ORIENTAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE NO.II, ST.MARY VILLA, ULLLOOR,
THIRUVANANTHAPURAM - 695 011.**
- 3 SUNITHA,
8/303-A, SABASH, ATTINKUZH, ATTIPRA,
THIRUVANANTHAPURAM - 695 001.**
- 4 THE DIVISIONAL MANAGER,
NATIONAL INSURANCE CO. LTD.,
ST.JOSEPH PRESS BUILDING, VAZHATHACAUD,
THIRUVANANTHAPURAM - 695 001.**



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**BY ADVS.
G.P.SHINOD
AJIT G ANJARLEKAR(K/000083/2014)
GOVIND PADMANAABHAN(K/925/2010)
ATUL MATHEWS(K/1675/2018)
GAYATHRI S.B.(K/2005/2020)
ELIZABETH VARKEY
SARAH SALVY**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 11.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



J U D G M E N T

Dated this the 11th day of March, 2025

The petitioner in OP(MV) No.1724 of 2005 on the file of the Motor Accidents Claims Tribunal, Attingal is the appellant. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal)

2. The Original Petition was filed under Section 166 of the Motor Vehicle Act, claiming compensation for the injuries sustained in the motor vehicle accident that occurred on 14.05.2005. According to the petitioner, on 14.05.2005, at about 1.30 p.m., while the petitioner was riding a motorcycle, another motorcycle bearing Registration No.Kl-01/AC-2795 hit against the motorcycle in which the petitioner was travelling and as a result of which, he fell down and sustained serious injuries.

3. The 1st respondent is the owner and 2nd respondent is the insurer of the offending motorcycle. The 3rd respondent is the owner and 4th respondent is the insurer of the motorcycle in which he was travelling.

4. In order to prove negligence against the rider of the offending vehicle, the petitioner has produced Ext.A5 copy of the FIR in Crime No.376 of 2005 of Kazhakootam Police Station, Ext.A6 copy of the scene mahazar and Ext.A7 copy of the charge sheet in the above crime. There was no contra evidence from the side of the



respondents to disprove Exts.A5 to A7. In spite of that, the tribunal found that the accident occurred due to the negligence of the riders of both the motorcycles and then dismissed the claim petition.

5. The law is well settled that, charge sheet filed by the police in the crime registered in respect to the accident is *prima facie* evidence of negligence against the accused in the charge sheet (**New India Insurance Co.Ltd. v. Pazhaniammal**, 2011 (3)KLT 648). However, ignoring the above settled position of law, the Tribunal has found that the petitioner failed to prove the negligence as against the rider of the offending vehicle and went on to make a sweeping remark that in all accidents involving two motorcycles there will be contributory negligence from the riders of both the vehicles. Such a sweeping observation was made by the Tribunal solely based on wild imaginations, unsupported by any iota of evidence on record and as such the above finding is liable to be set aside. At the same time, in the light of Exts.A5 to A7 documents, it is to be found that the petitioner has succeeded in proving that the accident occurred due to the negligence of the rider of the offending vehicle alone.

6. Since the Tribunal has not assessed the quantum of compensation due to the petitioner, the matter requires reconsideration by the Tribunal. In the result, the appeal is allowed and the impugned award is set aside. The matter is remanded back to the Tribunal for fresh disposal as per law.



Considering the fact that, this is an O.P of 2005, the parties are directed to appear before the Tribunal on 15.04.2025. The Tribunal is directed to dispose of the claim petition at the earliest, at any rate within a period of six months from the date fixed for the appearance of parties. The parties are permitted to raise all contentions available to them as per law, before the Tribunal.

Sd/-
C.PRATHEEP KUMAR
JUDGE

ADS