

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 16TH FEBRUARY 2006 / 27TH MAGHA, 1927

MFA.No. 599 of 1991(E)

OPMV.451/1986 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM
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APPELLANT/RESPONDENT:

GOVERNMENT OF KERALA REPRESENTED BY
CHIEF SECRETARY, TRIVANDRUM.

BY GOVERNMENT PLEADER (SRI. K.THAVAMONY)

RESPONDENTS:

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1. PHILIP, MANJILA, ASRAMAM,
QUILON-2.
 2. NELSON S/O.JOSEPH, LEELA VILASAM,
PATTATHANAM EAST WARD, QUILON.

BY ADV. SRI.ASOK M.CHERIAN FOR R1.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 16/02/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. HEMA, J.

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MFA No.599 of 1991

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Dated this 16th day of February, 2006.

JUDGMENT

The appellant State challenges the award passed in favour of the claimant-first respondent, who is the petitioner in O.P.(MV) No.451/86 by the Motor Accidents Claims Tribunal, Kollam.

2. The first respondent filed the petition on the allegation that mini bus driven by the 2nd respondent was going in front of the vehicle driven by the claimant. But without showing signal, the driver of the mini bus, rashly and negligently, turned the vehicle towards right and caused the front portion of the vehicle to hit front portion of the scooter in which the first respondent was travelling. The claimant sustained injuries and he claimed Rs.14,000/- as compensation from the driver, the owner and the insured. The owner is the State which is the appellant in this case. An award was passed making the driver and owner jointly and severally liable to pay the amount. The insured was not found liable to pay the amount. The amount awarded is Rs.40,300/- with 12% from the date of filing of the petition till realization.

3. Learned Government Pleader submitted that the Tribunal committed an error in holding that the driver of the vehicle was rash and negligent. According to the learned Government Pleader, the criminal court has found the driver not guilty of offence under Section 279 and 337 of IPC. It is submitted that it is only because of the negligence on the part of the Scooterist that the incident happened, since the claimant was only a person having learner's licence and not knowing how to drive a vehicle properly. On these grounds, the award is challenged.

4. Though the appellant would contend that there is a direction from the criminal court acquitting the 2nd respondent driver and finding that there was no rash and negligence in his driving the said document was not produced before the Tribunal. It appears that the judgment was pronounced even before the award was passed but no reason is stated why the judgment of the criminal court was not produced before the Tribunal. The learned counsel appearing for the claimant-first respondent submitted that he has established his case by proving the rashness and negligence on the part of the 2nd respondent in driving the mini bus by examining the claimant as PW1 and also another witness as PW2. Their evidence has stood the test of cross-examination. On going through the evidence and the judgment passed by the Tribunal, I do not find any reason to reverse the finding only on the

ground that criminal court has found she 2nd respondent to be not guilty of the alleged offence under Sections 279 and 337 IPC, especially in the absence of production of any document to prove the same.

5. It is also submitted by learned counsel for the first respondent that in the light of the dictum laid down by the Supreme Court in National Insurance Co. Ltd. v. Swaran Singh [2004 (1) KLT 781] that the claimant cannot be said to be left without a licence since learner's licence is also a valid licence. In the above circumstances, only because the claimant was driving the vehicle with a learner's licence that itself may not be a ground to discard the contention raised by the claimant that the 2nd respondent was rash and negligent in driving the vehicle.

6. Learned Government Pleader also made a contention that the quantum of compensation awarded is too high. But on going through the documents produced by the first respondent, especially the medical records, I find that the amount ordered is only proportionate to the gravity of the injury and the consequence. Exhibit A4 is the disability certificate issued to the claimant which shows that there is a permanent disability and the claimant has suffered loss of hearing. Details of the injuries sustained by the claimant are noted in Ext.A2 wound certificate which shows that there was an injury on the head and consequent to such injury the claimant

suffered permanent disability s revealed from Ext.A4. The disability was assessed as 10%. Exhibit A7 is an O.P. ticket issued from the Medical College Hospital which again shows that there is some defect in the hearing audiograph in relation to the claimant. There was no fracture to the color bone and the claimant would deposed that he cannot lift his right hand and there is also head ache . The court below has taken into account of the injuries sustained by the claimant and consequence of those injuries in coming to the conclusion that the claimant is entitled to Rs.40300/- as compensation. I do not find any reason to interfere with such finding.

This appeal is dismissed.

K. HEMA, JUDGE.

Krs.