

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 5TH APRIL 2006 / 15TH CHAITHRA, 1928

MFA.No. 150 of 1998()

OPMV.1464/1990 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
.....

APPELLANT:

THE ORIENTAL INSURANCE CO. LTD., THRISSUR
NOW REPRESENTED BY ITS ADMINISTRATIVE OFFICER,
MOTOR THIRD PARTY CLAIMS CELL, M.G.ROAD, KOCHI-682 035.

BY ADV. SRI.MATHEWS JACOB (SR.)

RESPONDENTS:

1. SURENDRAN, S/O.CHATHUNNY, THAIPARAMBATH HOUSE,
PERINGOTTUKARA, THRICUR DISTRICT.
2. KUTTAN, S/O.KRISHNAN, CHITTIKKAPPIL HOUSE,
CHERPU VILLAGE, TRICHUR DISTRICT.

(NO RELIEFS ARE CLAIMED AGAINST THE 2ND AND 3RD
RESPONDENTS IN THE CLAIM PETITION AND HENCE THEY
ARE NOT MADE PARTIES IN THIS APPEAL)

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.P.RAMACHANDRAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 05/04/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.HEMA, J.

M.F.A.NO.150 OF 1998

Dated this the 5th April, 2006

JUDGMENT

This appeal arises from an award passed in favour of the first respondent-claimant under Section 166 of the Motor Vehicles Act ('the Act', for short). Rupees twenty six thousand with interest at the rate of 12% per annum was ordered to be paid to the claimant. Out of this amount, the appellant-insurer was directed to deposit Rs.15,000/-. The balance amount was ordered to be deposited by the owner of the vehicle who is the second respondent herein. The owner has not challenged the award. The insurer has filed the appeal on various grounds.

2. According to the first claimant, he is a Police Constable who was aged 39 years at the time of filing the petition and his earning monthly income was Rs.1,500/-. On 3.4.1989 at about 8 p.m. while the petitioner was going in the bus No.KRR.6251 as

protection duty, the petitioner sustained injuries due to the rash and negligent driving of the vehicle by the driver. He sustained injury also at the hands of some miscreants who threw stones from the bus coming in the opposite direction. The claimant made a claim for compensation of Rs.40,500/- against the driver, owner and the insurer. The owner of the bus did not file any written statement and the O.P. was dismissed against the driver for non-payment of batta. The appellant contended that the accident did not occur due to rash and negligent driving of the driver. The details, such as age, income, nature of injury etc. are not correctly shown in the petition. Compensation claimed is excessive and that the bus is not insured at the time of accident.

3. The Tribunal analysed the evidence adduced in this case which consists of oral testimony of PW1 and Exhibits A1 to A6 on the side of the claimant and RW1 and Exhibit B1 on the side of the appellant. The Tribunal held that the accident occurred due to rash

and negligent driving of vehicle by the driver. The Tribunal also held on the basis of evidence that the claimant is entitled to get Rs.26,000/- under various heads. It was also found that since the accident occurred prior to the Motor Vehicles Act, 1939, the insurance liability per passenger is only Rs.15,000/- and the appellant was directed to pay only that amount. The owner was also found liable to pay the amount.

4. The appellant challenges the award mainly on the ground that the court below erred in finding that the driver was negligent. PW1, the claimant had given evidence that the accident occurred due to the rash and negligent driving of the driver of the vehicle. But nothing was brought out from his evidence to reject this version. A crime was also registered in connection with the incident for rash and negligent driving. There is no contra evidence also. The alleged rashness and negligence cannot be disputed by the Insurance Company, since no petition

was filed under Section 170 of the Act and the court has not given any permission to the appellant to contest the case on the grounds other than those are mentioned in Section 149 of the Act. In the above circumstances, I find, absolutely no reason to interfere with the findings regarding the rashness and negligence of the driver in driving the vehicle.

5. The Tribunal has only awarded Rs.15,000/- as against the appellant which is in accordance with law. The amount, it is submitted, has been deposited also. In the above circumstances, there is absolutely no ground to interfere in the matter.

The appeal is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

M.F.A.NO.150 OF 1998

JUDGMENT

5.4.2006