IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 13TH MARCH 2006 / 22ND PHALGUNA, 1927

MFA.No. 119 of 2000()

OPMV.1663/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

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APPELLANT:

NATIONAL INSURANCE COMPANY LTD.,
KOLENCHERRY BRANCH,
REPRESENTED BY ITS ADMINISTRATIVE OFFICER,
MOTOR THIRD PARTY CLAIMS SECTION,
REGIONAL OFFICE, M.G.ROAD, ERNAULAM.

BY ADV. SRI.LAL GEORGE

RESPONDENTS:

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1. K.B.SHANTHAKUMARI, W/O.RAMAKRISHNAN,
CHOLLATTU HOUSE, VADAYAMPADY P.O.,
AIKKARANADU SOUTH.

2. C.RAMAKRISHNAN,
CHOLLATTU HOUSE (SHREE NIKETHAN),
VADAYAMPADY P.O., AIKKARANADU SOUTH.

BY ADV. SRI.T.K.KOSHY
SRI.M.C.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/03/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.HEMA, J.

M.F.A.NO.119 OF 2000

Dated this the 13th day of March, 2006

JUDGMENT

An award was passed in favour of the claimant-first respondent for a total amount of Rs.15,250/- under Section 166 of the Motor Vehicles Act, 1998. According to the claimant, on 8.9.1997 at about 8.15 p.m she was proceeding on a scooter as a pillion rider on a public road. The scooter was driven by the second respondent, her husband, in a rash and negligent manner and the first respondent fell down from the scooter and sustained injuries. She was taken to the hospital. Her husband is the owner-cum-driver of the scooter. She filed a claim petition claiming Rs.65,500/- as compensation for the injury sustained by her arising out of the motor accident.

2. The appellant-insurance company contended that the owner-cum-driver of the vehicle is none other than the

claimant's husband and that there was no negligence on the part of the driver in causing the incident. She was not entitled to sue her husband for any tort committed by her husband and that the principles of awarding compensation in the Motor Vehicles Act are based on the principles of tort and common law. The quantum of compensation is exorbitant.

3. Before the Tribunal, the claimant WAS examined as PW1 and Exhibits A1 to A9 were marked on the side of the claimant. Exhibit B1 was marked on the side of the respondent. No evidence was adduced on the side of the insurance company. The driver-second respondent was set ex-parte.

4. Learned counsel for the appellant contended that there is no negligence on the side of the driver of the vehicle and even going by the evidence of the claimant, she is not entitled to get compensation under Section 166 of the Motor Vehicles Act. It was argued that only in cases where negligence on the part of the driver is established, the claimant can get

compensation for the injury sustained in the Motor Vehicles Act. Learned counsel for the appellant drew my attention to the evidence given in the cross-examination to infer that there was no negligence on the side of the second respondent in causing the accident.

5. PW1 stated that while she was proceeding on the scooter driven by her husband, the scooter was swayed and the scooter was in speed. It was also categorically stated by her in the chief-examination that if the vehicle had been driven at a lesser speed, the accident could have been avoided. In the cross-examination however she said that the accident occurred, since the scooter was swayed by her husband as there was a small pit on the road. It was on seeing the pit that the vehicle was swayed. However, when a suggestion was made to her that there was no negligence on the part of the second respondent-driver in causing the accident, she said, it is correct.

6. Learned counsel for claimant-first respondent vehemently contended that the admission made by the claimant in the context in which she was cross-examined cannot be taken to hold that there was no negligence on the part of the driver. This answer was given only when a suggestion was made in the cross-examination by the lawyer. It was submitted on behalf of the claimant that it was only an aftermath of the skilled cross-examination. But on an over all appreciation of evidence given by the claimant and the documents produced in this case, it cannot be contended that the accident is not occurred due to negligence of the driver, it is argued.

7. Learned counsel for the first respondent pointed out that the first information report, charge sheet, scene mahazar etc. were produced and marked as Exhibits A1 to A6 on the side of the claimant. As per the charge sheet submitted by the police, the case was registered against the driver of the vehicle. FIR was also registered on a complaint made by the

claimant. There is no rule that the husband of the claimant will not be negligent in driving only because pillion rider happens to be his wife. Even in cases where the husband is driving a vehicle and the wife is sitting as a pillion driver, an accident can occur due to negligence of the driver. There is no presumption that husband will at all the time be careful in driving the vehicle if his wife happens to be the pillion-rider so as to avoid an accident.

8. In the light of the categoric evidence given by PW1 that the accident could have been avoided, if the vehicle has been driven at a lesser speed and that the vehicle was suddenly swayed on seeing a small spit, couple with the documentary evidence charge sheeting the driver for negligent and rash driving, I find that the evidence given by her to a suggestion made by the cross-examiner need not be viewed seriously so as to throw the entire case set up by the claimant overboard. I can only accept the finding of the Tribunal that the accident occurred due to the rash and negligent driving of

the second respondent driver. Learned counsel for the appellant also cited a decision reported in ***Minu.B.Mehta v. Balakrishna*** (AIR 1977 SC 1248) and ***Kaushnuma Beegam v. National Insurance Company Ltd.*** (2001(1) KLT 408) and contended that when there is no negligence on the side of the driver, no compensation can be awarded in favour of the claimant. Since I have already found that on facts it has to be concluded that the second respondent was negligent and rash in his driving, the decisions are not applicable to the facts of the case.

In the above circumstances, I do not find any reason to interfere with the award passed, which also appears to be reasonable taking into account the nature of the injury and other circumstances and evidence.

The appeal is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

M.F.A.NO.119 OF 2000

JUDGMENT

13.3.2006