

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 18TH JANUARY 2006 / 28TH POUSHA, 1927

MFA.No. 1343 of 2000(C)

OPMV.812/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
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APPELLANT:

UNITED INDIA INSURANCE CO. LTD., SULTHAN BATHERI BRANCH,
REPRESENTED BY MANAGER, 3RD PARTY CLAIM,
VETTUKATTIL BLDG., ERNAKULAM.

BY ADV. SRI.R.S.KALKURA

RESPONDENTS:

1. PARAMESWARA PANICKER, S/O. NARAYANA PANICKER,
MULLASSERI HOUSE, PERIKALLOR, PULPALLI AMSOM,
SULATHANBATHERY TALUK.
2. BABY MATHEW, VATTAKKARA HOUSE,
PADICHEERA POST, PULPALLY.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 18 / 11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P.2897/2001 IN M.F.A.NO.1343/2000

.....

DISMISSED.

Id/-K. HEMA, JUDGE.

18.1.2006.

// TRUE COPY//

P.S. TO JUDGE.

K. HEMA, J.

M.F.A. No.1343 of 2000

Dated this the 18th day of January, 2006

JUDGMENT

This appeal is by the Insurance Company which is impleaded as 2nd respondent in O.P.(MV) No.812 of 1996.

2. The first respondent herein filed the O.P. under Section 166 of the Motor Vehicles Act for compensation for the injuries allegedly sustained in a motor accident. According to the first respondent, the accident occurred due to the rash and negligent driving of the vehicle by the 2nd respondent, while the 1st respondent was walking along the road through the road margin on 10.11.1996 at about 9.30 a.m. The vehicle involved is a jeep, which was driven by the 2nd respondent. Second respondent is also the owner of the vehicle. A crime was registered against the 2nd respondent. The vehicle is insured with the appellant. The claimant-first respondent claimed an amount of Rs.1,00,000/- for the injuries sustained in the accident.

3. The Insurance Company and the driver-cum-owner denied the alleged rashness and negligence in driving the vehicle by the 2nd respondent. They also disputed sustaining of any injury in the accident. The age, income etc. of the claimant/first respondent also were disputed.

The first respondent is alleged to be a business man aged 75 years old.

4. The learned Tribunal passed an award at Rs.77,000/- with 12% interest per annum from the date of filing of this petition till realisation with cost of Rs.3,393/-. The respondents were also held to be jointly and severally liable to pay the amount to the claimant. The appellant was directed to deposit the amount within 30 days from the date of award.

5. Learned counsel appearing for the appellant-Insurance Company challenged the legality of the award passed. It is pointed out that though rashness and negligence on the part of the driver of the vehicle involved was disputed, learned Tribunal passed an award, even without there being any oral evidence. The disputed facts were not established by the claimant-1st respondent, by adducing any oral evidence. The case of the appellant and the 2nd respondent was to the effect that the incident occurred due to negligence of the claimant/first respondent, since he negligently crossed the road. The claimant did not examine himself or other witness to prove the alleged negligence of the driver or the nature of the injuries sustained by him.

6. The Tribunal placed reliance upon the first information report, which is marked as Ext.A2 which is not proved. None of the documents were marked by the Tribunal with the consent of the respondents. The documents are neither admitted in evidence or proved. The Tribunal committed a serious error in relying upon Ext.A2 and the contents of the

First Information Statement to hold that there was rashness and negligence on the part of the first respondent in driving the vehicle. Since the relevant fact is disputed, no reliance ought to have been placed on the contents of Ext.A2 to prove the disputed fact. Without the document being proved in accordance with law.

7. The appellant and the 2nd respondent disputed sustaining of any injury by the first respondent. But the Tribunal accepted Ext.A4, the Accident Register -Cum -Wound Certificate as evidence. The said document is not marked on consent or by examining the maker of the document. In the above circumstances, reliance placed on the documents to pass an award against the respondent is illegal.

8. It was also pointed out that the total amount awarded is Rs.77,000/- but paragraphs 8 to 10 of the award will show that the total amount will be less than Rs,77,000/-. There appears to be a calculation error also. In the above circumstances, I find that the award passed is illegal and it is to be set aside. Though notice was served on the claimant, there was no representation for the claimant-first respondent.

9. In the result, the award passed as per the impugned award is set aside and the case is remanded to the court below for fresh consideration

and disposal in accordance with law. The case being one of the year 1996, the court below shall list priority to this and dispose of within six months from the date of receipt of a copy of this judgment.

Appeal is allowed.

Sd/-

K. HEMA, JUDGE.

hrs