IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K. HEMA

TUESDAY, THE 21ST MARCH 2006 / 30TH PHALGUNA, 1927

MACA. No. 836 of 2005

OP(MV). 1164/1994 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKKARA

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APPELLANT/2ND RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD.,
KOTTARAKKARA, REPRESENTED BY ITS ADMINISTRATIVE OFFICER, REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18

BY ADV. SRI. GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: CLAIMANT/1ST RESPONDENT:

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1. **KANNAN. M.,**
   SANTHA RANY HOUSE (SANTHA NIVAS), KALLUMMOODU, KRISHNAPURAM, KAYAMKULAM.

2. **C. REGHUNATHAN,**
   SANGEETHA, KRISHNAPURAM, KAYAMKULAM.

BY ADV. SRI. N.L. KRISHNAMOORTHY
SRI. K. LAKSHMINARAYANAN
SMT. SATHYA SHREEPRIYA
SRI. P.B. SAHASRANAMAN
SRI. T.S. HARIKUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 21/03/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. HEMA, J.

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M.A.C.A. No.836 of 2005

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Dated this the 21st day of March, 2006

JUDGMENT

Appellant is the Insurance Company. An award was passed in favour of the claimant/first respondent allowing him to realise compensation at Rs.71,000/- with 9% interest from 21.10.1994 from appellant and second respondent. The second respondent herein is the alleged rider of the motor cycle and the claimant is the pillion rider. The Insurance Company was directed to deposit the amount within one month.

2. The first respondent/claimant filed an application under Section 166 of the Motor vehicle Act claiming compensation for the injuries allegedly sustained by him in the accident involving motor cycle. The claimant was allegedly travelling on a motor cycle which was ridden by second respondent herein on a public road on 13.12.1993 at 12 noon. It is alleged that because of the rash and negligent driving of the vehicle by second respondent, the motor cycle fell into a gutter while second respondent applied sudden brake and the claimant was thrown out of the vehicle and fell in front of the vehicle. In the meantime back wheel of the vehicle ran over his right

leg. He was admitted in the hospital, and was treated as an inpatient. He claimed Rs. 2 lakhs as compensation for the injuries sustained.

3. The appellant Insurance Company filed a counter statement contending that the accident narrated in the petition is false and the negligence alleged against first respondent is also false. The accident itself was denied in total. It was pleaded that no such accident as alleged in the petition occurred on the alleged date. The claimant allegedly cooked up a story in collusion with 2nd respondent who is a close associate of the claimant. Other contentions were also raised in the written statement.

4. The claimant examined PWs. 1 to 3 and marked Ext.A1 to Ext. A11 on his side. The respondents did not examine any witness nor produce any document in support of their case. The Tribunal held that there is sufficient evidence to show that claimant was a pillion rider on the motor cycle and that first respondent was riding the same in a rash and negligent manner. It was also held that there is evidence to show that claimant suffered injuries in the accident and liability was fastened on appellant and second respondent to pay compensation. Learned counsel appearing for the appellant vehemently contended that in the light of the evidence adduced in the case, the finding that the accident occurred as alleged by the

claimant cannot be sustained.

5. Learned counsel for the first respondent-claimant, however, contended that there is ample evidence on the side of the claimant, both oral and documentary, to support the pleadings. But the appellant did not adduce any evidence to rebut such evidence and therefore, it is contended that Tribunal was right in accepting the case set up by the claimant. It is true that there is evidence of PWs 1 to 3 and also Exts.A 1 to A11 on the side of the claimant. PWs 1 to 3 and injured are eye-witness to the occurrence. PW2 is the Doctor who issued Ext.A1 and marked Ext.A11 medical record from Puzhpagiri hospital.

6. PW1 and PW2 gave evidence corroborating each other to prove that the claimant was a pillion rider and first respondent was the rider of the vehicle etc. But, only because oral evidence of two witnesses are consistent with each other in all material particulars, can their evidence be accepted in toto?

7. It is well settled that witnesses may lie, but not the circumstances. It is not sufficient if the court mechanically swallows and accepts all what the witnesses may say from the witness box. Their evidence must be put to strict scrutiny based on the materials available on record and also the circumstances which may not lie. In

other words, the court has to test the evidence of the witnesses on broad probabilities and also with reference to other evidence available on record. The appellant would contend that the accident did not occur on the date and time alleged by the claimant. In support of his contention, he has relied upon Ext.A2 document. Ext.A2 is the copy of the wound certificate issued to PW1 from the hospital. It shows that the claimant was examined on 3.12.1993 at 8.20 p.m. The alleged cause of injury stated by this witness to the doctor was "fall from a scooter on 3.12.93 at 4 p.m". PW1 was cross-examined with reference to this aspect. He pleaded ignorance of allegation made by him to doctor which is recorded in Ext.A2.

8. Going by probabilities, there is no reason why normally medical records should contain a false entry relating to the time of occurrence. In Ext.A11also, the treatment records available at the hospital, the allegation made is that the accident occurred at 4 p.m. on 3.12.1993. There is discrepancy with respect to the time of occurrence in the documents produced by the claimant themselves. The burden is therefore, on him to explain the discrepancy. This infirmity cannot be viewed lightly on the facts and circumstances of the case, especially in the light of the denial of the accident by the appellant.

9. Though the claimant would contend that at the time of evidence and also in the petition that the accident occurred at 12 noon, there is no explanation why he was admitted in the Hospital only at 8.20 p.m. There was a delay of about 8 ½ hours in getting himself admitted, though the claimant had sustained serious injuries. But, there is no plausible explanation for the delay in admission of the claimant in the hospital. The claimant attempted to give an explanation that he was admitted in the Ebenezer hospital immediately after the incident and it is only thereafter that he was taken to the Pushpagiri hospital. Therefore, the explanation appears to be that some time was required for him to be taken from one hospital to the other and, therefore, the delay occurred in getting the claimant admitted in Puzhpagiri hospital.

10. But such explanation is not supported by evidence in this case. Though PW1, during cross-examination, deposed that he was admitted in Ebenezer hospital and he also got discharged and this version is true, there must be documentary evidence in the hospital regarding the treatment given to him immediately after the incident. But no document has been produced despite the challenge on the very occurrence of a motor accident.

11. In this context, learned counsel for appellant submitted that he filed a petition for calling for records from the Ebenezer hospital and a report was submitted by the hospital authorities that there are no documents in the hospital relating to PW1's hospitalisation. Therefore, evidence given by PW1 that he was admitted in Ebenezer hospital and he was discharged etc. cannot be believed. Learned counsel appearing for the respondent/claimant argued that claimant obtained only first-aid from Ebenezer hospital and that is the reason why documents were not available. This argument also cannot be accepted, in the light of the version give by PW1 that there was admission and also discharge from hospital where he was first admitted immediately after the accident.

12. The non-availability of the documents of the medical records would certainly destroy the worth of evidence of PW1 regarding hospitalization in Ebenezer hospital. Consequently, there is absence of explanation for the delayed admission of the claimant in the Pushpagiri hospital. This would lead to the inference that it is highly improbable that an accident took place at the time, as spoken to by the claimant. The accident, even as per the alleged statement of claimant recorded in Ext.A2 has taken place at 4 p.m and not at 12 noon, as alleged by complainant in the petition and evidence.

13. The reliability of evidence of PW1 is destroyed by other circumstances as well. Even if there is no record to prove the hospitalization etc., immediately after the accident, there is no explanation why no F.I.R. was registered in respect of the incident within a reasonable time. The incident occurred on 3.12.1993, but the F.I.R. was registered as per Ext.A1 only on 8.6.1994. There was a delay of six months in registration of the F.I.R, that too, based on a private complaint filed before the court. The court referred the case for investigation by the police and but on investigation, the case was referred also. There is no case for the claimant that after such reference, he took any steps to proceed with the criminal case. Thus, this is an added factor as to why the claim made by the first respondent cannot be accepted. It is only reasonable to hold that the accident did not occur as alleged.

14. Evidence of the claimant itself is shaky and there is no reason to accept his evidence to prove the accident. PW3 is admittedly a close friend of PW1 and he is also a neighbour of PW1. The evidence of PW3 is not of much consequence in the light of the above facts and circumstances. As per his version he had not told about witnessing the accident even to PW1 and he had come to court only at request of PW1. The claimant has not established that the

accident occurred as alleged by him and hence, no compensation ought to have been granted, in his favour.

15. It was also pointed out that first respondent remained ex parte before the lower court and before this court also. According to Insurance Company, claimant and first respondent were colluding with each other. The impugned order is liable to be set aside and I do so.

Appeal is allowed.

K. HEMA, JUDGE.

krs