

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 29TH OCTOBER 2010 / 7TH KARTHIKA 1932

MACA.No. 2370 of 2007()

OPMV.3033/1999 & 3175/1999 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT / PETITIONER IN OP(MV) :

V.M.ALI, S/O.MARAKKAR, 50/1888
BLAYIPARAMBU, EDAPPALLY NORTH P.O.,
COCHIN-24.

BY ADV. SRI.VIVEK VARGHESE P.J.

RESPONDENTS / RESPONDENTS IN OP(MV) :

1. K.RAJAN, KIZHAKKEDATHU KIZHAKKEVEETIL,
EROOR P.O., TRIPUNITHURA.
2. P.SHINOD, PUTHUPARAMBIL HOUSE,
KUTTIKKATTUKARA, KADUNGALLUR VILLAGE.
3. THE NATIONAL INSURANCE CO.LTD.,
TRIPUNITHURA.
4. THE NEW INDIA ASSURANCE CO.LTD.,
COCHIN-22.

R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 29/10/2010, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Mn

M.N. KRISHNAN, J.

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M.A.C.A.NO.2370 OF 2007

.....
Dated this the 29th day of October, 2010.

J U D G M E N T

This is an appeal preferred against the award of the Claims Tribunal, Ernakulam in OP(MV)No.3033/1999. It is the case of the claimant that a car came and hit on the auto rickshaw belonging to the petitioner, as a result of which the auto rickshaw toppled down. It is also submitted that the auto rickshaw sustained heavy damages and the petitioner also suffered extensive injuries. It has to be stated that the Tribunal dismissed the application on the ground that the matter was reported to the police or the authorities only after 5 days that too in the form of a private complaint and therefore the circumstances are suspicious. Then the Tribunal said that the evidence of PW1 does not inspire confidence and therefore dismissed the application.

2. I am afraid such an approach may result in injustice. It is true that in a case filed under Section 166 of the Motor Vehicles Act, the claimant has to satisfy the conscience of the court regarding negligence of the rider. A private

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complaint was filed which was referred under Section 166 (3) of the CrI.P.C. The police after due investigation filed charge sheet against driver of the car. PW1 had gone to the box and had given evidence. The Tribunal does not state anything to the effect that evidence of PW1 cannot be accepted. It has to be stated that mere interestedness is not a ground to throw away the evidence. It is the intrinsic reliability and inherent probability that has to be analysed for accepting the evidence. Therefore the Tribunal should not have in a casual manner discarded the evidence and dismissed the application. I feel an opportunity can be given to the claimant to adduce further evidence in the matter to substantiate his case.

3. In the result, the MACA is allowed and the award passed by the Tribunal is set aside and the matter is remitted back to the Tribunal with a direction to permit all concerned to produce documentary as well as oral evidence in support of their respective contentions and then dispose of the matter in accordance with law. Parties are directed to appear before the tribunal on 17.12.2010.

Disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.

.....
A.S.NO.389 OF 2001

.....
8th day of October, 2010.

J U D G M E N T