

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 31ST DAY OF MAY 2016/10TH JYAISHTA, 1938

MACA.No. 1019 of 2008 ()

AGAINST THE AWARD IN OPMV 1385/2002 of MACT MUVATTUPUZHA DATED 27-09-
2007

APPELLANT(S)/PETITIONERS:

VIJAYAKUMARY, W/O.PADMASUNDARAN,
AMBARAPILIL HOUSE, KAROORKARA,, MANNED VILLAGE,,
MUVATTUPUZHA

BY ADV. SRI.BIJU ABRAHAM

RESPONDENT(S)/1:

1. RAJEEV, S/O.KUTTAPPAN NAIR, THEKKEDATH H
HOUSE, CHEMMANADU KARA, THIRUVANIYOOR VILLAGE,
KUNNATHUNADU TALUK
2. UNITED INDIA INSURANCE CO.LTD.,
BRANCH OFFICE, 2ND FLOOR, MANIKKANAMPARAMBIL BUILD, ING,
LAYAM ROAD, THIRIPUNITHURA

R,R2 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 31-05-2016, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**P.N. Ravindran &
K. Ramakrishnan, JJ.**

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M.A.C.A.No.1019 of 2008
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Dated this the 31st May, 2016

JUDGMENT

K. Ramakrishnan, J.

The claimant in O.P.(MV) No.1385 of 2002 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha is the appellant herein. The above claim petition was filed by the claimant for compensation for the personal injuries sustained by her in a motor vehicle accident occurred on 12.1.2002. According to her, she was travelling in a scooter with No.KL-7U/1864 as a pillion rider and due to the negligent driving of the scooter by its rider, she fell down and sustained injuries. She was treated as inpatient. She suffered severe injuries and claimed a total compensation of Rs.7,70,000/- but restricted her claim to Rs.1,50,000/-. According to her, the accident occurred due to the negligence of the first respondent who is the owner-cum-rider of the scooter and it was insured with the second respondent and they are jointly and severally liable to pay the compensation.

2. Before the tribunal, the first respondent remained absent. The second respondent filed a written statement admitting the insurance of the vehicle involved in the accident but they contended that she sustained injuries due to her own negligence and there was

delay in registering the case and that shows the falsity of the claimant's case. The amount claimed under various heads are high. They denied the injury and the disability, etc. claimed in the claim petition. They prayed for dismissal of the claim petition.

3. The claimant/appellant was examined as PW1 and Exts.A1 to A8 were marked on her side. No oral evidence was adduced on the side of the respondents and Ext.B1 was marked on the side of the second respondent. After considering the evidence on record, the tribunal found that the claimant had failed to prove the accident as claimed by her and dismissed the claim petition without assessing the compensation payable to the appellant. Dissatisfied with the dismissal of the claim petition, the present appeal has been filed by the appellant/claimant before the tribunal.

4. Heard Shri Biju Abraham, learned counsel for the appellant and Shri P. Jayasankar, learned counsel for the second respondent.

5. Learned counsel for the appellant submitted that the tribunal had thoroughly misunderstood and misappreciated the evidence of the claimant. Her case was that she went to school to collect the progress card of the child who was studying in Bhavans School, Eroor along with her brother-in-law and while she was returning from the school, the unfortunate incident occurred. Immediately she was taken to the

hospital and she reported the accident as fall from scooter and she was under the impression that intimation would have been given to the police from hospital and after discharge, since none came to enquire about the accident, she enquired and came to understand that no criminal case was registered. Thereafter, her husband filed a private complaint and a case was registered and final report was filed. The reasons stated by the tribunal for not believing PW1 is unsustainable in law. The tribunal ought to have answered all the points though it was intended to dismiss the claim petition, so as to avoid a remand of the case for that purpose by the appellate court. The learned counsel also submitted that the claimant was on leave for five months and she suffered severe injuries and she is entitled to get compensation as claimed in the petition.

6. On the other hand, learned counsel for the second respondent insurance company submitted that the way in which PW1 had given evidence will go to show that she was giving false statement before the tribunal. The tribunal considered the improbability on the claimant coming to the house of her brother-in-law and the accident being occurred as claimed by her and correctly dismissed the claim petition.

7. The case of the claimant in the claim petition was that on 12.1.2002, she went to the house of her brother-in-law at Vandipetta

so as to go to the school to collect the progress card of her child who was studying in Bhavans School, Eroor and she was taken to school by her brother-in-law who was the first respondent in the case. She was travelling as a pillion rider and after attending the school, they were returning home and due to the negligent driving of the scooter, it skidded and she fell down and sustained injury. It is seen from Ext.A5 wound certificate that she was taken to Indira Gandhi Co-operative Hospital, Gandhi Nagar, Kochi on 12.1.2012 at 1 p.m.. The accident, according to the appellant, occurred on the same day at 12.30 p.m.. So, there is no delay in going to the hospital. Further, in the hospital, the cause of injury was given as fall from scooter near Shaari Temple, Eroor. That also tallies with the cause of injury given by her. Further, it is seen from Ext.A5 wound certificate that she suffered fracture shaft of humerus (Rt) and she was treated as inpatient from 12.1.2002 to 18.2.2002 with I.P.No.19301.

8. It is seen from the wound certificate that a Police Head Constable was informed regarding the accident. But quite unfortunate for the appellant, that no case was registered. It is clear from the evidence of PW1 that when she realised that no case was registered, a private complaint was filed by her husband before the Magistrate on 30.1.2002 and it was forwarded to the police on 15.3.2002 under

section 156(3) of the Code of Criminal Procedure and it was on that basis that Ext.A2 First Information Report was registered as Crime No.910 of 2002 of City Traffic Police Station against the first respondent and after investigation Ext.A3 final report was filed. It is seen from Ext.A3 final report that after investigation the police found that it is a genuine case and the rider of the scooter was chargesheeted for offences under sections 279, 337 and 338 of Indian Penal Code.

9. It is true that there are some minor discrepancies in the evidence of PW1 regarding her knowledge of non intimation of the case to the police by the hospital authorities. Further she was not able to give the exact direction and distance to the house of her brother-in-law. These are not sufficient ground to disbelieve her case. Even in the written statement filed by the second respondent insurance company, they have no case that there was no such accident occurred. Their case was that the accident occurred due to the negligence of the claimant and it was not occurred in the way in which it was stated by her and that it was in collusion with the first respondent that the complaint has been filed. Further, the cause of the accident was given to the hospital authorities within half an hour of the incident and the place of occurrence, cause of incident, etc. are as stated in the claim

petition itself. So, there is no possibility of manipulation or giving any false version to the hospital authorities at the time when she went to the hospital immediately after the accident.

10. Further, the tribunal found that the day when the claimant went to the school, i.e. 12.1.2002 happened to be a second Saturday and it was an improbability of going to school on a holiday. But the case of the claimant was that she went to the school where her child is studying, to collect the progress card after the examination results were published, in an open house conducted by the school. So, it cannot be said that there is improbability for the parent of a child going to the school to attend an open house which was convened on a second Saturday. Further, there was no attempt made on the part of the insurance company to adduce any further evidence to show that there was a collusion between the first respondent and the claimant in filing the claim petition in respect of the incident which had not happened at all. So, under the circumstances, the tribunal had misappreciated the evidence and the finding by the tribunal that the claimant had not proved the incident, is unsustainable in law. The delay in registering the crime has been explained by PW1 which is convincing in the circumstances of the case as well. The finding of the tribunal that there is no incident occurred and thereby dismissing the

claim petition is unsustainable in law and the same is liable to be set aside. Being the case of a pillion rider falling down from a scooter on account of the negligence of the rider, the first respondent is liable to pay compensation who happened to be the rider and owner of the vehicle and the second respondent being the insurer of the vehicle, they are liable to indemnify the first respondent, as Ext.B1 is a comprehensive/package policy which covers the liability of a pillion rider carried in the vehicle as well.

11. We therefore set aside the finding of the tribunal that there was no accident occurred and the award dismissing the claim petition and hold that the claimant succeeded in proving the accident and the accident occurred due to the negligent driving of the scooter by the first respondent.

12. Though the tribunal had not assessed the compensation which the tribunal ought to have done, even in the case of dismissal of the claim petition, the points raised by the parties have to be answered and only the ground on which it intended to dismiss the application, would have specified in the award as the reason for dismissal is the result portion. Considering the fact that the case is of the year 2002, we are not inclined to remand the case for directing the tribunal to assess the compensation as evidence is available before this

court for that purpose.

13. The claimant suffered fracture shaft of humerus (Rt). It is seen from Ext.A7 salary certificate that she was working in the office of the Regional Provident Fund Commissioner and getting a gross salary of Rs.8,664/- during the previous month of the accident. It is seen from Ext.A8 that she was on leave on medical ground from 14.1.2002 to 31.5.2002 out of which 90 days were medical leave and 48 days were earned leave. She had no case that she suffered any loss of earnings or salary during this period. So, she is not entitled to get any compensation under the head loss of earnings during the period of treatment. Further, she had also no case that she had exhausted her leave as well so as to get compensation under the head loss of leave suffered by her on account of the accident.

14. It is seen from Ext.A6 treatment certificate that she was treated in Indira Gandhi Co-operative Hospital, Gandhi Nagar, Kochi from 12.1.2002 for fracture of humerus (Rt) with radial nerve palsy. She was treated with closed reduction and plaster application and was discharged on 18.1.2002. After discharge she was undergoing regular follow ups. On 5.4.2002 she started to undergo physiotherapy and this was continued for five weeks. The neurological recovery is progressing and she has to continue regular follow ups with the

mobilisation of shoulder, elbow and wrist joints for some more months. The certificate was dated 3.7.2002. She had not produced any document to show that she suffered any permanent disability on account of this. Ext.A1 series medical bills show that she had spent an amount of Rs.6,039/- towards medical expenses. Considering the circumstances, we feel that an amount of Rs.6,100/- can be awarded under the head medical expenses. She was treated as inpatient for a period of 7 days. So, taking Rs.200/- per day, she can be awarded a sum of Rs.1,400/- under the head attendant expenses. Considering the period of treatment and the number of times she went to hospital, an amount of Rs.1,000/- can be awarded under the head transport to hospital. An amount of Rs.3,000/- can be granted towards extra nourishment. Considering the nature of injury sustained and the treatment undergone, we feel it appropriate to award a sum of Rs.25,000/- under the head pain and suffering. Since she had not produced any document to show that she sustained any permanent disability, considering the fact that she had sustained fracture of humerus and had to undergo physiotherapy with restriction of movement of shoulder, she might have suffered some inconvenience and discomfort even after discharge from the hospital. Considering these facts, we feel that an amount of Rs.15,000/- can be awarded

under the head loss of amenities in life. The appellant is not entitled to get any amount under other heads as she had failed to prove that she suffered any disability or she requires any further treatment as well.

The compensation awarded is as follows:

Medical Expenses	:Rs. 6,100/-
Attendant expenses	:Rs. 1,400/-
Transport to hospital	:Rs. 1,000/-
Extra nourishment	:Rs. 3,000/-
Pain and suffering	:Rs.25,000/-
Loss of amenities	:Rs.15,000/-

Total	:Rs.51,500/-
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The appellant/claimant is entitled to get a total compensation of Rs.51,500/- which respondents 1 and 2 are jointly and severally liable to pay. Since the second respondent is liable to indemnify the insured, there will be a direction to the second respondent to deposit the amount of Rs.51,500/- with interest at 7.5% per annum from the date of petition till payment. Three months time is granted to the second respondent to deposit the amount. If the amount is deposited, the tribunal is directed to disburse the amount to the claimant.

The appeal is allowed in part setting aside the award passed by the tribunal dismissing the claim petition and awarding compensation

as mentioned above. The parties are directed to bear their respective costs throughout.

(P.N. Ravindran, Judge)

(K. Ramakrishnan, Judge)

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