

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 31ST DAY OF MAY 2019 / 10TH JYAISHTA, 1941

MACA.No.1088 of 2011

AGAINST THE AWARD IN OP(MV)187/2008 of the MOTOR ACCIDENTS
CLAIMS TRIBUNAL, VATAKARA, DATED 28-02-2011

APPELLANT/2ND RESPONDENT IN THE OP:

THE ORIENTAL INSURANCE CO.LTD
VATAKARA, REPRESENTED BY THE AUTHORIZED
SIGNATORY,, THE ORIENTAL INSURANCE CO.LTD.,
REGIONAL OFFICE,, METRO PALACE, ERNAKULAM NORTH,
KOCHI-18.

BY ADV. SRI.A.R.GEORGE

RESPONDENTS/CLAIMANTS & 1ST RESPONDENT IN THE OP:

- 1 OMANA,
W/O. LATE KOTTAPRAVAN BALAN,
"SREERAGAM" HOUSE, P.O.SIVAPURAM, SIVAPURAM,
VILLAGE, THALASSERY TALUK, PIN - 670 702.
- 2 SHEETHAL VADAVATHY, D/O.LATE KOTTAPRAVAN
BALAN, "SREERAGAM" HOUSE, P.O.SIVAPURAM,
SIVAPURAM VILLAGE, THALASSERY TALUK, PIN-670702.
- 3 SHEERAJ V. S/O.LATE KOTTAPRAVAN
BALAN, "SREERAGAM" HOUSE, P.O.SIVAPURAM,
SIVAPURAM VILLAGE, THALASSERY TALUK, PIN-670702.
- 4 M.VINEEDHARAN S/O.KUNHIKANNAN
"VANDANAM", P.O.MADAPPALLY COLLEGE,
VATAKARA TALUK, PIN-673 102.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
31.05.2019, ALONG WITH MACA.1089/2011, MACA.1090/2011,
MACA.1091/2011, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 31ST DAY OF MAY 2019 / 10TH JYAISHTA, 1941

MACA.No.1089 of 2011

AGAINST THE AWARD IN OP(MV)169/2008 of the MOTOR ACCIDENTS
CLAIMS TRIBUNAL VATAKARA DATED 28-02-2011

APPELLANT/2ND RESPONDENT IN THE OP:

THE ORIENTAL INSURANCE CO. LTD
VATAKARA, REPRESENTED BY THE AUTHORIZED
SIGNATORY,, THE ORIENTAL INSURANCE CO. LTD.,
REGIONAL OFFICE,, METRO PALACE, ERNAKULAM NORTH,
KOCHI-18.

BY ADV. SRI.A.R.GEORGE

RESPONDENTS/CLAIMANT & 1ST RESPONDENT IN THE OP:

1 OMANA,
W/O.LATE KOTTAPRAVAN BALAN,
"SREERAGAM" HOUSE, P.O.SIVAPURAM, SIVAPURAM,
VILLAGE, THALASSERY TALUK, PIN-670 702.

2 M.VINEEDHARAN S/O. KUNHIKANNAN
"VANDANAM", P.O.MADAPPALLY COLLEGE,
VATAKARA TALUK, PIN-673 102.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 31.05.2019, ALONG WITH MACA.1091/2011, MACA.1088/2011,
MACA.1090/2011, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 31ST DAY OF MAY 2019 / 10TH JYAISHTA, 1941

MACA.No.1090 of 2011

AGAINST THE AWARD IN OP(MV) 186/2008 of the MOTOR ACCIDENT
CLAIMS TRIBUNAL, VATAKARA, DATED 28-02-2011

APPELLANT/2ND RESPONDENT IN THE OP:

THE ORIENTAL INSURANCE CO.LTD.
VATAKARA, REPRESENTED BY THE AUTHORIZED
SIGNATORY,, THE ORIENTAL INSURANCE CO. LTD.,
REGIONAL OFFICE,, METRO PALACE, ERNAKULAM NORTH,
KOCHI-18.

BY ADV. SRI.A.R.GEORGE

RESPONDENTS/CLAIMANTS & 1ST RESPONDENT IN THE OP:

- 1 M.K.SREEKALA,
W/O. LATE LATHEESH,
EDAMADATHIL HOUSE, P.O.CHORODE, CHORODE VILLAGE,
VATAKARA TALUK, PIN-673 106.
- 2 AMAYA E.M. (MINOR) ,
D/O. LATE LATHEESH,
EDAMADATHIL HOUSE, P.O.CHORODE, CHORODE VILLAGE,
VATAKARA TALUK, PIN-673 106.
- 3 ASHWAL E.M. (MINOR) ,
S/O. LATE LATHEESH,
EDAMADATHIL HOUSE, P.O.CHORODE, CHORODE VILLAGE,
VATAKARA TALUK, PIN-673 106.
(RESPONDENTS 2 & 3 MINORS REP. BY THEIR MOTHER
AND NEXT FRIEND - M.K.SREEKALA, THE 1ST
RESPONDENT.

- 4 PRABHA, W/O. KUNHIRAMAN
EDAMADATHIL HOUSE, P.O.CHORODE, CHORODE VILLAGE,
VATAKARA TALUK, PIN-673 106.
- 5 M.VINEEDHARAN, S/O. KUNHIKANNAN
"VANDANAM", P.O.MADAPPALLY COLLEGE,
VATAKARA TALUK, PIN-673 102.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 31.05.2019, ALONG WITH MACA.1091/2011, MACA.1089/2011,
MACA.1088/2011, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 31ST DAY OF MAY 2019 / 10TH JYAISHTA, 1941

MACA.No.1091 of 2011

AGAINST THE AWARD IN OP(MV) 168/2008 of the MOTOR ACCIDENTS
CLAIMS TRIBUNAL, VATAKARA, DATED 28-02-2011

APPELLANT/2ND RESPONDENT IN THE OP:

THE ORIENTAL INSURANCE CO.LTD.
VATAKARA, REPRESENTED BY THE AUTHORIZED,
SIGNATORY, THE ORIENTAL INSURANCE CO. LTD.,,
REGIONAL OFFICE, METRO PALACE, ERNAKULAM NORTH,
KOCHI-18.

BY ADV. SRI.A.R.GEORGE

RESPONDENTS/CLAIMANT & 1ST RESPONDENT IN THE OP:

- 1 SHEERAJ V,
S/O.LATE KOTTAPRAVAN BALAN,
"SREERAGAM" HOUSE, P.O.SIVAPURAM,, SIVAPURAM
VILLAGE, THALASSERY TALUK,, PIN-670 702.
- 2 M.VINEEDHARAN, S/O. KUNHIKANNAN,
"VANDANAM", P.O.MADAPPALLY COLLEGE,
VATAKARA TALUK, PIN-673 102.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 31.05.2019, ALONG WITH MACA.1089/2011, MACA.1088/2011,
MACA.1090/2011, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.A.C.A.Nos.1088, 1089, 1090 & 1091 of 2011

JUDGMENT

One Balan, his wife Omana and son Sreeraj were travelling in a car driven by one Latheesh. The said car hit against a mini lorry on 31.08.2007 and as a result, Latheesh and Balan died and Omana and Sreeraj sustained serious injuries. Proceedings for compensation were initiated by the legal representatives of Latheesh and Balan as also by the injured before the Motor Accidents Claims Tribunal against the owner, driver and insurer of an autorickshaw which passed through the scene of the accident just before the accident, alleging that it is on account of the negligence of the driver of the autorickshaw that the accident occurred. The appellant in these appeals was the insurer of the autorickshaw. They contested the proceedings contending that as the autorickshaw was not involved in the accident, they are not liable to compensate the claimants in the proceedings. The Tribunal found that it is on account of the negligence of the driver of the autorickshaw that the accident occurred and consequently disposed of the proceedings by a

common award directing the the appellant to pay compensation to the claimants. The appellant is aggrieved by the said common award and hence these appeals.

2. Heard the learned counsel for the appellant as also the learned counsel for the claimants in the proceedings.

3. The learned counsel for the appellant at the outset contended that insofar as the autorickshaw was not involved in the accident, the Tribunal could not have directed the appellant to pay compensation to the claimants in the proceedings. It was also contended by the learned counsel that the finding of the Tribunal that the accident occurred on account of the negligence of the driver of the autorickshaw is incorrect and unsustainable. The said contention was substantiated by the learned counsel pointing out that the earliest version of the accident given by a witness to the Police, on the basis of which a case was registered, was that the accident occurred on account of the negligence of the driver of the mini lorry. It was argued by the learned counsel that the said witness who was examined in the proceedings before the Motor Accidents Claims Tribunal retracted from the earlier stand and deposed before the Tribunal that the accident occurred on account of the negligence of the autorickshaw. It was also pointed out by

the learned counsel that the driver of the autorickshaw was implicated as the accused in the case only after about five days. According to the learned counsel, the Tribunal, in the circumstances, went wrong in holding that the negligence of the driver of the autorickshaw has caused the accident. Per contra, the learned counsel for the claimants pointed out that in the investigation conducted by the Police in the case registered in connection with the accident, it was revealed that it is on account of the negligence of the driver of the autorickshaw that the accident occurred and it is on account of the said reason, the Police laid Ext.A2 charge sheet against the driver of the autorickshaw for having caused the accident on account of negligent driving. It was contended by the learned counsel that in the light of the chargesheet laid by the Police, the appellant ought to have adduced independent evidence and discredited the Police investigation. It was also pointed out by the learned counsel that the appellant has not adduced any evidence in the proceedings to discredit the investigation made by the Police and the conclusion arrived at by them. According to the learned counsel, in the circumstances, the Tribunal cannot be found fault with for having found negligence on the part of the driver of the autorickshaw.

4. I have considered the contentions raised by the learned counsel on either side.

5 It is seen that the car driven by Latheesh was coming from north to south and the mini lorry was proceeding in the opposite direction. It was found by the Police in the course of investigation of the case that the autorickshaw was proceeding in front of the mini lorry in the same direction and all on a sudden, the driver of the autorickshaw took a right turn towards east. It was also found by the Police that in order to avoid a collision of the car with the autorickshaw, Latheesh turned the car towards right and it is at that point of time that the mini lorry which was coming in the same direction behind the autorickshaw hit against the car. It is seen that after examining various eye witnesses and other materials collected, the Police came to the conclusion that the accident occurred on account of the negligent conduct of the driver of the autorickshaw in abruptly turning his vehicle towards right and it is on that basis that they have chargesheeted the driver of the autorickshaw for having caused the accident on account of negligent driving. True, the autorickshaw was not involved in the accident in the sense that it did not hit against the

other two vehicles. But, merely for the reason that the autorickshaw did not hit against the other vehicles, its owner and insurer are not entitled to be exonerated from the liability. What is to be seen in a case of this nature is as to whether the accident arose out of the use of the motor vehicles. If the accident arose out of the use of motor vehicles, the owner of the vehicle which caused the accident on account of negligent driving, has to compensate the victims. There is, therefore, no merit in the contention that the appellant is not liable to compensate the victims since the autorickshaw was not directly involved in the accident. In **New India Assurance Co. Ltd. v. Pazhaniammal** (2011(3) KLT 648), this Court has held that the final report in the Police case can be accepted by the Tribunal as a proof of negligence. Of course, a party to the proceedings who has not accepted the Police report is free to adduce independent evidence to discredit the conclusion arrived at by the Police. The materials on record do not indicate that there was any attempt on the part of the appellant to adduce independent evidence to discredit the Police report. The essential thing to be done towards that direction is to examine the Police officer who has investigated the case and the appellant has not chosen to examine him at least. The learned

counsel for the appellant strenuously contended that the driver of the autorickshaw was implicated as an accused only after five days of the accident. A report filed by the investigating officer before the jurisdictional Magistrate was brought to my notice to substantiate the said fact. According to the learned counsel, it can, therefore, be inferred that the driver of the autorickshaw was maliciously implicated as an accused in the case to fasten the liability to pay compensation on the appellant. As noted, the first information statement, on the basis of which the case was registered, was that the accident occurred on account of the negligence of the driver of the mini lorry. It is in the course of investigation of the case by the Police, it was revealed that the accident occurred on account of the negligence of the driver of the autorickshaw. The driver of the autorickshaw was implicated as an accused only at that point of time. Such conducts are attributed against the Police normally when the vehicles involved in the accident are not covered by an insurance policy covering the risk of the third parties. It is conceded by the learned counsel for the appellant that the mini lorry involved in the accident was also covered by a valid insurance policy. The delay in implicating the driver of the autorickshaw as an accused in the case, in the

circumstances, cannot be said to be malicious. True, it is based on the statement given by PW1 that the Police registered the crime and the version of PW1 to the Police was that it is on account of the negligence of the driver of the mini lorry that the accident occurred. But, the said statement of PW1 does not preclude the Police from ascertaining the truth and filing a report before the court on that basis. Insofar as it is found that the charge sheet laid by the Police alone was sufficient for the Tribunal to render a finding as to the negligence on the part of the driver the autorickshaw, it is immaterial as to whether the Tribunal was justified in placing reliance on the evidence of PW1 for the said purpose. The appeals, in the circumstances, are without merits and the same are, accordingly, dismissed.

Sd/-
P.B.SURESH KUMAR, JUDGE.

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