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Santhosh Kumar Vs. M.Balan

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Court : Kerala

Decided On : Jul-31-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Santhosh Kumar

Respondent : M.Balan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN WEDNESDAY, THE 31ST DAY OF JULY 2013 9TH SRAVANA, 1935 MACA.No. 266 of 2010 (E) ---------- AGAINST THE AWARD IN OPMV 1766 2004 of M.A.C.T., THALASSERY. APPELLANT(S)/PETITIONER: ---------- SANTHOSH KUMAR,S/O.NARAYANAN,AGED 2 YRS ODAIL HOUSE, THILLANKERY.P.O. BY ADV. SRI.GRASHIOUS KURIAKOSE RESPONDENT(S)/RESPONDENTS: ---------- 1. M.BALAN,S/O.KRISHNAN,PARAKATTIL HOUSE, ULIYIL.P.O.

2. BIJU AMBILIYADAN,S/O.KRISHNAN, AMBILIYADAN HOUSE, ULIYIL.P.O, MATTANNUR.

3. THE UNITED INDIA INSURANCE CO.LTD., P.B.NO.97, ASHEEQUE TOWERS, NARANGAPURAM THALASSERY. R3 BY ADV.

SRI.P.M.MURALEEDHARAN(B/O,NO MEMO) R3 BY ADV. SRI.P.MURALEEDHARAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 31-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: S. Siri Jagan & K. Ramakrishnan, JJ.

=-=-=-=-=-=-=--=-=-=-=-=-=-=-= M.A.C.A. No. 266 of 2010 =-=-=-=-=-=-=-=--=-=-=-=-=-=-=-= Dated this, the 31st day of July, 2013.

JUDGMENT

Siri Jagan, J.

The claimant in O.P.(MV) No. 1766/2004 before the Motor Accidents Claims Tribunal, Thalassery, is the appellant herein. He filed the O.P. claiming compensation for the injuries and disabilities suffered by him allegedly in an accident caused by the negligent driving of a vehicle owned by the 1st respondent, driven by the 2nd respondent and insured with the 3rd respondent. The Tribunal dismissed the O.P. holding that the accident occurred because of the negligence of the appellant himself insofar as he attempted to board a moving lorry. The appellant is challenging the award of the Tribunal.

2. According to appellant, Ext. A1 FIR filed by the appellant before the Tribunal itself shows that the accident occurred because of the negligence of the 2nd respondent and the fact that while giving evidence as PW1, without understanding the consequences, the appellant said that the accident happened when he attempted to board a moving lorry, will not absolve the driver from his responsibility to drive the vehicle carefully. It is submitted that the appellant was a cleaner in the lorry and the FIR suggests that the 2nd respondent was waiting for the appellant, cleaner of the lorry, to board the vehicle and before the appellant boarded the vehicle, he took the lorry forward, which resulted in the accident. Therefore, the finding of the Tribunal that the accident was because of the negligence of the M.A.C.A. No. 266 of 2010 -:

2. :- appellant is perverse and unsustainable, is the contention raised.

3. On the other hand, the learned counsel for the Insurance Company points out that irrespective of the statements in the FIR, when the claimant himself gave evidence before the Tribunal to the effect that the accident happened when he attempted to board a moving lorry, the same is sufficient to prove that the accident occurred because of his own negligence. It is further submitted that the other contentions now raised by the appellant are not proved by the evidence of PW1, the appellant himself. That being so, those contentions cannot be taken into account for the purpose of deciding whether the award is correct or not, is the contention raised.

4. We have considered the rival contentions in detail.

5. Even in motor accident claims, the basic principles of evidence are to be followed. The appellant himself gave evidence as PW1 and deposed before the Tribunal that the accident happened when he attempted to board the moving lorry. He did not give the explanations now put forward, in re-examination. As such, the evidence available is to the effect that the accident happened while the appellant attempted to board the moving lorry. After having sustained injuries in an accident caused when he attempted to board a moving lorry, which he ought not to have done, the appellant cannot now raise a contention that M.A.C.A. No. 266 of 2010 -:

3. :- the accident occurred because of the negligence of the driver. Further, the FIR is only a prima facie evidence and the final report has not been produced or proved to show that there was any negligence on the part of the 2nd respondent.

6. In the above circumstances, we do not find any perversity or infirmity in the findings of the Tribunal. Accordingly, the appeal is dismissed. However, the dismissal of this appeal or the O.P. (MV) will not stand in the way of the appellant approaching the Employees' Compensation Commissioner for compensation from his employer under the Employees' Compensation Act, if the appellant is legally entitled to do so. Sd/- S. Siri Jagan, Judge. Sd/- K. Ramakrishnan, Judge. Tds/ [True copy] P.S to Judge.

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