

R.Anilkumar vs Nizar and Others

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : MACA/1112/2011

Appellant : R.Anilkumar

Respondent : Nizar and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH
AGRAHAYANA, 1945 AGAINST THE AWARD DATED 29.07.2010 IN
OP(MV) 1325/2003 OF ADDITIONAL MOTOR ACCIDENT CLAIMS
TRIBUNAL, KOTTAYAM APPELLANT/PETITIONER: R.ANILKUMAR
S/O.RAMACHANDRAN NAIR,NADUVILEZHATHU HOUSE,
PADINJAREKKARA, VAIKOM. BY ADV SRI.K.A.HASHIM
RESPONDENTS/RESPONDENTS: 1 NIZAR NIZAR MANZIL,
KADUTHURUTHY, KOTTAYAM DIST. PIN 686 604 2 REBEENA
W/O.NIZAR, NIZAR MANZIL KADUTHURUTHY, KOTTAYAM
DISTRICT, PIN 686 604 3 THE NEW INDIA ASSURANCE CO.LTD.,

ETTUMANOOR BRANCH, KOTTAYAM DISTRICT, PIN 686 604 4
DAMODHARAN (ADDL.R4) MANNAPURATH HOUSE,, VELOOR
KARA, KOTTAYAM BY ADV SMT.M.HEMALATHA-R3 THIS MOTOR
ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON
30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The appellant is the petitioner in O.P.(M.V.) No.1325/2003 on the files of the Additional Motor Accident Claims Tribunal, Kottayam. The said claim petition was submitted by him seeking compensation for the injuries sustained to him in a motor accident

that occurred on 08.11.2001. The accident occurred when the motorcycle ridden by the appellant was hit by a car bearing Registration No.KRY 698 driven by the 1st respondent. The said car was owned by the 2nd respondent and was insured with the 3rd respondent. The 4th respondent was the person in whose name the policy of the said car was issued. According to the appellant, he was aged 29 years at the time of the accident and was working as a Clerk in the Office of the Superintendent of Police at Kottayam with a monthly income of Rs.5,000/-.

2. The 3rd respondent Insurance Company alone contested

the matter by filing a written statement, wherein they accepted the coverage of the policy but disputed the liability on various grounds. They also disputed the negligence and quantum of compensation.

3. The evidence in this case consists of oral testimonies of

PWs 1 to 3 and Exts.A1 to A14 from the side of the appellant. The disability certificate of the appellant was produced as Ext.X1. Ext.B1 was marked from the side of the respondents. After the trial, the Tribunal arrived at a conclusion that the accident occurred due to the negligence on the part of the appellant himself and therefore, the claim petition was dismissed. This appeal is submitted by him, challenging the said award.

4. Heard Sri.K.A. Hashim, learned counsel appearing for the appellant and Smt.M. Hemalatha, learned counsel appearing for the 3rd respondent Insurance Company.

5. The main challenge in this appeal is against the finding

of the Tribunal holding the appellant responsible for the accident. Of course, it is true that the accident occurred due to the collision of the motorcycle ridden by the appellant with a car insured with the 3rd respondent. However, it is evident from the records that as per Ext.A2 final report, the driver of the car was charge-sheeted by the Police after conducting an investigation in this regard. The finding

of the Tribunal holding the appellant responsible for the accident was mainly based on the place of the accident, as is evident from Ext.B1 scene mahazar. Apart from the production of Ext.B1 scene mahazar, the respondents adduced no contra evidence. On the other hand, from the appellant's side, the petitioner mounted the box and PWs 2 and 3 were also examined. The position of law in this regard is well settled by this Court in *New India Insurance Company Ltd. v. Pazhaniyammal and others* [2011 (3) KLT 648], wherein it

was held that in the absence of any contra evidence, the conclusion

arrived by the Police, in the charge sheet submitted before the jurisdictional court could be accepted for determining the question of negligence. Similarly, as regards the acceptability of the scene mahazar, the position of law is well settled in the light of the observations made in *Jiju Kuruvila and Others v. Kunjunjamma Mohan and Others* [(2013) 9 SCC 166] rendered by the honourable Supreme Court. In the said decision, it was held that the question of negligence cannot not be decided based on the scene mahazar alone. It is to be noted that the scene

mahazer would indicate only the spot of the accident and the other relevant aspects such as the speed of the vehicle, the traffic that existed at the relevant time, and other relevant circumstances may not be discernible from the scene mahazar. Thus, in the light of the settled position of law, I hold that the finding of

the Tribunal holding the appellant responsible for the accident is not legally sustainable. This is particularly because, as per Ext.A2, the driver of the car stands charge-sheeted, and the respondents adduced no contra evidence. However, as the compensation was not quantified by the Tribunal for doing the said exercise, the matter has to be remanded back.

In the light of the aforesaid observations and findings, this

appeal is allowed and the award dated 29.07.2010 passed by the Additional Motor Accident Claims Tribunal, Kottayam in O.P. (M.V.) No.1325/2003 is hereby set aside by holding that the accident occurred due to the negligence on the part of the 1 st respondent in driving the car bearing Registration No.KRY 698, which was insured with the 3rd respondent herein. The matter is

remanded back to the Tribunal to determine the quantum of compensation. All the parties concerned shall be at liberty to adduce further evidence to establish their respective contentions with reference to those claims in relation to the quantum of

compensation. The parties are directed to appear before the Tribunal on 22.12.2023. In case all the parties are not appearing on that date, the Tribunal shall send notice to them. Considering the fact that the claim petition was submitted in the year 2003, the Tribunal shall make every endeavour to complete the trial as expeditiously as possible.

Sd/- ZIYAD RAHMAN A.A. JUDGE scs

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