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Jamsheera vs Narayanan

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Court : Kerala

Decided On : Aug-31-2022

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : MACA/37/2013

Appellant : Jamsheera

Respondent : Narayanan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA, 1944 MACA NO. 37 OF 2013 AGAINST THE ORDER/JUDGMENT IN OPMV 539/2009 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD APPELLANT/PETITIONER: JAMSHEERA (MINOR) D/O.JAMEELA, REPRESENTED BY GUARDIAN AND MOTHER JAMEELA, SRAMPIKKAL HOUSE, MANNUR P.O., PALAKKAD DISTRICT. BY ADV SRI.L.RAJESH NARAYAN RESPONDENTS/RESPONDENTS: 1 NARAYANAN WEST P.O., PALAKKAD. 2 SUSEELA W/O.NARAYANAN, 2/228, PUTHANPURAKKAL HOUSE, KOTTAKKUNNU, MANNUR WEST P.O.,

PALAKKAD. 3 NATIONAL INSURANCE CO. LTD. CONNAUGHT PLACE, NEW DELHI-110001. THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22.08.2022, THE COURT ON 31.08.2022 DELIVERED THE FOLLOWING: MACA No.37 of 2013 2

SOPHY THOMAS, J.

---------- M.A.C.A No.37 of 2013 ---------- Dated this the 31st day of August, 2022

JUDGMENT

This appeal has been preferred by the claimant in OP(MV) No.539 of 2009 challenging the impugned award by which her claim petition was dismissed.

2. The appellant, a 13 year old girl, met with a road traffic

accident on 17.01.2008 at 9 a.m while she was walking through the side of Ambalapara Mannur road. According to the appellant, KL- 09V/5655 Maruti Alto car knocked her down and she sustained serious injuries. She was treated at Valluvanad hospital for a long

period. She approached the Tribunal through her guardian/next friend-mother claiming compensation of Rs.3 lakh. The Tribunal, finding that the registration number of the offending vehicle stated by the appellant in her claim petition was different from the charge sheet, and also finding that the appellant could not prove before court that she sustained the injuries mentioned in the discharge

summary in the alleged road traffic accident occurred on

17.01.2008, dismissed her claim, and that is under challenge. MACA No.37 of 2013 3

3. Now let us see whether any interference is called for in the impugned award.

4. Though the appellant alleged that, she sustained injuries in

a road traffic accident occurred on 17.01.2008 and immediately after the accident, she was taken to Valluvanad hospital for treatment, no wound certificate was produced by her to prove the injuries or its history. If she was admitted to Valluvanad hospital with history of a road traffic accident, in normal course, intimation might have been given to Police from the hospital itself. But, no such intimation was given and no crime was registered by the Police

immediately after her admission in hospital. Admittedly, on 31.03.2008, FIR was registered by Police on the basis of a private complaint filed by the appellant which was after 2 months of the incident. The explanation given by the appellant was that, she was under the impression that intimation was sent to Police from the hospital, and later she came to know that, no such intimation was

given, and then only she filed a private complaint. The respondent/insurer produced Ext.B1 copy of the private complaint filed by the complainant before the Judicial First Class Magistrate Court-II, Palakkad. In that complaint, the registration number of the offending vehicle was shown as KL-9U/5655. In Ext.A4 charge MACA No.37 of 2013 4

sheet also, the registration number of the offending vehicle was shown as KL-9U/5655. But, in Ext.A3 AMVI report, the registration number of the offending vehicle was shown as KL-9V/5655. The R.C owner of that vehicle was the 1 st respondent Narayanan.P, Puthanpurackal, Kottakunnu, Mannur West. The owner and driver of KL-9V/5655 Maruti Car remained ex parte before the Tribunal.

5. Learned counsel for the 3rd respondent/insurer would

submit that, the registration number of the offending vehicle was KL-9V/5655 but Ext.B1 private complaint, Ext.A1 FIR and Ext.A4 charge sheet will show that the vehicle involved in the incident was KL-9U/5655.

6. Since the letter U and V are similar in writing, it might have been a clerical error from the part of the claimant in writing the registration number of the offending vehicle in the private complaint as KL-9U/5655. But, during investigation, the AMVI

physically examined that vehicle and then its number was noted

was KL-9V/5655. Again when the number of that vehicle was written in the charge sheet, the very same mistake was repeated by the Police also and the number written could be read as KL- 9U/5655. If the number of the vehicle mentioned in the private complaint was not the actual number of the vehicle inspected by MACA No.37 of 2013 5 the AMVI, the Police could not have prepared charge sheet against the 2nd respondent for driving that car. So, in all probability, 'KL-9V' was mistakenly written as 'KL-9U' because of similarity of English letter V and U. So, we cannot blindly reject the case of the appellant on the ground that, the registration number of the vehicle stated in the private complaint and charge sheet was different from the registration number of the vehicle stated in the claim petition.

7. The appellant did not produce the wound certificate issued

from Valluvanad hospital though she produced Ext.A11 series medical bills issued from that hospital from 17.01.2008 onwards. Exts.A6 and A7 discharge summaries also will mention any road traffic accident. Moreover, the injuries noted in Exts.A6 and A7 were burns back of both thighs. But, according to Ext.A4 charge sheet, the injuries were on right knee, left hand, cheek and buttock. Learned counsel for the insurer argued that the injuries shown in the discharge summary were not tallying with the injuries noted in the charge sheet. So also the appellant failed to prove that, she had sustained injuries in the road traffic accident narrated in Ext.A4 charge sheet.

8. Learned counsel Sri.L Rajesh Narayan, appearing for the

appellant prayed for an opportunity to prove the injuries and its MACA No.37 of 2013 6 history by producing relevant documents, for which he prayed for a remand.

9. As we have seen, regarding the registration number of the

vehicle involved in the accident, V might have been mistakenly noted as 'U'. But regarding the injuries, the appellant was duty bound to prove before the Tribunal

with supporting documents, that she sustained the injuries in the road traffic accident occurred on 17.01.2008, involving the offending vehicle. The appellant was a 13 year old girl at the time of accident and there is evidence to show that, on 17.01.2008 she was admitted in Valluvanad hospital,

Ottapalam and was discharged on 23.01.2008. Again on 27.02.2008, she was admitted in that hospital and was discharged on 08.03.2008. Ext.A11 series medical bills support the expenses incurred for her treatment.

10. Considering all these facts, this Court is of the view that the appellant can be given an opportunity to prove her case with supporting documents, which has to be done within a specified period.

11. In the result, the impugned award is set aside and the case is remanded to the Tribunal for affording an opportunity to the claimant to prove that, she sustained the injuries mentioned in MACA No.37 of 2013 7 Ext.A6 and A7 discharge cards in the road traffic accident occurred on 17.01.2008, by producing the wound certificate and also by

proving the cause of injury. The Tribunal also has to find out, whether the injuries mentioned in the wound certificate were tallying with the injuries mentioned in the charge sheet as well as in the discharge cards. The Tribunal has to reconsider her claim in the light of further evidence, if any, adduced by the claimant.

Registry is directed to transmit the lower court records forthwith. Parties to appear before the Tribunal on 14.09.2022. The Tribunal shall dispose the case within a further period of two months from the date of appearance of the parties. The appeal is allowed to that extent. No order as to costs. Sd/- SOPHY THOMAS JUDGE smp

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