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Thomas Chacko vs Chandy Joseph & Others

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Court : Kerala

Decided On : Jan-12-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : MACA/2562/2008

Appellant : Thomas Chacko

Respondent : Chandy Joseph & Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 12TH DAY OF JANUARY 2022 / 22ND POUSHA, 1943 MACA NO. 2562 OF 2008 AGAINST THE AWARD DATED 30.06.2008 IN OPMV 1510/2001 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL,PATHANAMTHITTA APPELLANT/PETITIONER: THOMAS CHACKO, VAZHAYIL HOUSE KARIKULAM P.O., PAZHAVANGADI VILLAGE, RANNY TALUK. BY ADVS. SRI.T.K.KOSHY SRI.SABU I.KOSHY RESPONDENTS/RESPONDENTS: 1 CHANDY JOSEPH , S/O JOSEPH VALIYANETHU HOUSE, VYATTUPUZHA P.O., CHITTAR-SEETHATHODU VILLAGE, RANNY TALUK. 2 ABDUL ASSIM VILAKOM PURAYIDOM AJAS MANZIL, PATHANAMTHITTA. 3 THE BRANCH

MANAGER NEW INDIA ASSURANCE COMPANY LTD., BRANCH OFFICE, CHANGAYIL BUILDINGS,, PATHANAMTHITTA - 689 645. BY ADVS. SRI.T.MADHU SMT.T.C.SOWMIAVATHY THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 12.01.2022, ALONG WITH CO.84/2009, 163/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:- Dated this the 12th day of January, 2022

JUDGMENT

The appellant was the petitioner in O.P (MV) No.1510/2001 on the file of the Motor Accidents Claims Tribunal, Pathanamthitta. The respondents in the appeal were the respondents before the Tribunal.

2. The appellant had filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation for the damages caused to his Maruti car bearing registration No. KL 3C 4647. It was his case that, in the accident that happened on

19.12.1999, due to the negligence of the first respondent - the driver of an Ambassador car bearing registration No. KL - 4 - 9763 (offending car) the appellants car got damaged. The second respondent was the owner and the third respondent was the insurer of the offending car. The appellant claimed Rs.1,00,000/- from the respondents as damages. In the

-:3:- same accident, a person named George V. Mathew lost his life. His legal representatives had filed OP(M.V) No.469/2000 before the same Tribunal.

3. The respondents 1 and 2 did not contest the proceeding.

4. The third respondent had filed separate written statements in both the claim petitions. In the captioned case, the third respondent, inter alia, contended that the cost of the materials, the cost of labour and the expenses allegedly incurred by the appellant were not correct because as per the inspection report of the Assistant Motor Vehicles

Inspector, only minor damages were noted. The insurer of the Maruti car had already reimbursed the loss to the appellant. The damage claimed by the appellant was excessive. Hence, the third respondent prayed for the dismissal of the claim petition.

5. The Tribunal, consolidated and jointly tried the -:4:- two claim petitions.

6. The petitioners in the two claim petitions

produced and marked Exhibits A1 to A18 in evidence. The Tribunal, on the basis of Exhibit A2 scene mahazar arrived at the conclusion that the driver of the Maruti car was guilty for contributory negligence to the extent of 40%. Even though, the Tribunal quantified the damage at Rs.58,796.99, 40% was deducted and the third respondent was directed to pay an amount of Rs.30,829/- with interest and proportionate cost.

7. Aggrieved by the finding of contributory negligence and dissatisfied with the quantum of compensation awarded by the Tribunal, the petitioner is in appeal.

8. Heard; Sri.T.K. Koshy, the learned counsel appearing for the appellant/petitioner and Smt.T.C. Sowmiavathy, the learned counsel appearing for the 3 rd respondent/insurer. -:5:-

9. The questions that arise for consideration in the

appeal are (i) whether the finding of the contributory negligence is sustainable in law ?(ii) whether the damages awarded by the Tribunal is reasonable and just ? Question No.(i) 10.The specific case of the appellant in the claim petition was that the accident was caused due to the negligence of the first respondent - driver of the

offending car. To substantiate his assertions in the claim petition, he had produced Exhibit A1 FIR, Exhibit A2 and A3 scene mahazars and Exhibit A6 charge sheet filed by the Pathanamthitta Police in Crime No.938/99. The respondents did not let in any evidence to the contrary. However, the Tribunal on the basis of Exhibit A2 scene mahazar, found that the offending car was on the correct side and the

Maruti

car was on the wrong side, arrived at the conclusion

-:6:- that the driver of the Maruti car had contributed 40% to the accident. Accordingly, the Tribunal held that the appellant was only entitled to 60% of the compensation amount i.e., Rs.30,829/-.

11. In New India Assurance Co.Ltd. v.

Pazhaniammal [2011 (3) KLT 648], a Division Bench of this Court has categorically held that as a general rule, the production of the charge sheet is prima facie evidence of negligence for the purpose of a claim under Section 166 of the Motor Vehicles Act,1988. Charge sheet can be accepted as evidence of negligence against the accused driver. If any party does not accept the charge sheet, then the burden is on such party to adduce oral evidence and discredit the charge sheet. Only then, the charge sheet will fall into pale of insignificance.

12. Likewise, another Division Bench of this Court in Kolavan and Others V. Salim [2018 (1) KLT 489] -:7:-

has emphatically held that, once charge sheet is filed, the Tribunal will not be justified in finding negligence contrary to the findings in the charge sheet, merely relying on the scene mahazar, without there being any direct or corroborative evidence.

13. The Honourable Supreme Court in Jiju

Kuruvila & others v. Kunjujamma Mohan & Others [(2013) 9 SCC 166] has held that no inference can be drawn on the basis of a scene mahazar, to arrive at a conclusion of contributory negligence.

14. In the light of the declaration of the law in the

afore-cited decisions, and considering the fact that the police had in Exhibit A6 charge sheet found that the accident happened due to the negligence of the first respondent and the respondents having not let in any evidence to the contrary to

discredit Exhibit A6 charge sheet, I hold that the finding of the Tribunal attributing contributory negligence on the driver of the -:8:- Maruti car to the extent of 40% is patently erroneous and wrong. Therefore, I set aside the finding and hold that the appellant is entitled to the entire amount of compensation awarded by the Tribunal i.e., Rs,51,382/-. Accordingly, I answer question No(i) in favour of the appellant. Question No.(ii)

15. The appellant had claimed an amount of

Rs.1,00,000/- as damages. However, the Tribunal held

that the appellant is only entitled to an amount of Rs.51,382/-. Thereafter, the Tribunal deducted 40% of the compensation amount and awarded Rs.30,829/-.

16. Admittedly, the appellant had not mounted

the witness box and let in oral evidence to prove his case. He only produced Exhibit A13 to Exhibit A18 documents to substantiate his pleadings. Indisputably, the appellant did not examine the Surveyor who prepared Exhibit A18 survey report. -:9:-

17. This Court in Jaya v. Shaji [2014(1) KLT 31] has held that, the mere production of a survey report is not sufficient to prove a claim for damages.

18. Again this Court in Joseph v. Venkata Rao [2016(1) KLT 802] has held that the entire onus of proof is on the petitioner to prove the damages incurred.

19. Going by the pleadings and materials on

record, especially the fact that the petitioner has not mounted the box or examined the surveyor who prepared Exhibit A18 survey report, I am of the definite view that the amount awarded by the Tribunal is reasonable and just. I do not any reason or ground to enhance the damages awarded by the Tribunal, for the want of proper proof. Nonetheless, in view of my findings on question No.(i), I hold that the appellant is entitled to the entire amount of compensation awarded by the Tribunal i.e. Rs.51,382/-. The third respondent -:10:- is ordered to deposit the entire

compensation of Rs.51,382/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation and cost of Rs.2200/-. With the above observations, the appeal is disposed of . Sd/- C.S.DIAS,JUDGE rmm12/01/2022

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