

Gopi Vs. Suresh Kumar

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Court : Kerala

Decided On : Aug-12-2015

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Gopi

Respondent : Suresh Kumar

Advocate for Pet/Ap. : Sri. R.T.Pradeep

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH WEDNESDAY, THE 12^H DAY OF AUGUST 2015 21ST SRAVANA, 1937 MACA.No. 878 of 2012 () ----- AGAINST THE AWARD IN OP(MV) 1112/2005 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, ATTINGAL DATED 21-01-2012 APPELLANT/APPLICANT: ----- GOPI AGED 43 YEARS, S/O.APPY, SAJITHA BHAVAN NEAR ANUGRAHA BHAVAN, MENAMKULAM, THIRUVANANTHAPURAM. BY ADVS.SRI.R.T.PRADEEP SRI.J.ROBINSON RESPONDENTS/RESPONDENTS: ----- 1. SURESH KUMAR KUNNIL PUTHEN VEEDU, POWDIKONAM, THIRUVANANTHAPURAM 695587.

2. THE DIVISIONAL MANAGER NEW INDIA ASSURANCE CO.LTD., KOTTARATHIL BUILDING PALAYAM, THIRUVANANTHAPURAM695001. R2 BY ADV. SRI.LAL GEORGE R BY SRI.A.A.ZIYAD RAHMAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON1208-2015, ALONG WITH MACA. 956/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: SHG/ T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

----- M.A.C.A.Nos.878 & 956 of 2012 -----

----- Dated this the 12th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

Both these appeals have been filed by the respective claimants in O.P.(M.V.)Nos.1112/2005 and 1111/2005 on the file of the Motor Accidents Claims Tribunal, Attingal. It is a case where the Tribunal dismissed the claim petitions.

2. Heard the learned counsel for the appellants and the learned counsel for the Insurance Company.

3. Learned counsel for the appellants submitted that the accident occurred on 6.2.2005 at about 7 p.m. The appellant in MACA No.878/2012 was riding a motorcycle bearing registration No.KL-01/Z-9011 through the public road from Kazhakoottom - Menamkulam. The offending vehicle is an autorickshaw bearing registration No.KL-01/D- 3580.

4. The appellant in MACA8782012 had sustained the following injuries:
M.A.C.A.Nos.878 & 956 of 2012 -2- 1. Lacerated wound on the dorsom of right foot and the sole of right foot, skin deep.

2. Fracture Zygomatic region 3. Sub conjunctival haemorrhage Rt eye 4. Fracture posteriolateral wall of Rt maxillary sinus with blood density.

5. The appellant in MACA9562012 also had sustained very serious injuries. Before the Tribunal both the appellants have adduced evidence and Exts. A1 to A16 have been marked in evidence and those include Exts. A1 to A3 the police records and Exts.A4 to A16 to show the treatment undertaken by them. Both the appellants were treated in the Medical College Hospital, Thiruvananthapuram. What went wrong as far as the appellants/claimants is the finding by the Tribunal that the appellant in MACA8782012 was under the influence of alcohol. It is contended by the learned counsel for the appellants that no such finding could have been entered by the Tribunal. It is submitted that the police after thorough investigation has filed the charge sheet Ext.A3; that also against the driver of the autorickshaw. No offence has been alleged against the appellant in MACA8782012 under M.A.C.A.Nos.878 & 956 of 2012 -3- Section 185 of the Motor Vehicles Act. It is submitted that merely on the basis of the endorsement given in the casualty card (Ext.A14) that there is smell of alcohol the Tribunal readily concluded that the appellant in MACA8782012 was in inebriated condition which might have caused the accident. It is submitted that the award has to be set aside and the cases may be remanded back for consideration.

6. Learned counsel for the Insurance Company submitted that the driver of the autorickshaw has not been impleaded before the Tribunal as a party. It is submitted that detailed evidence has to be taken by the Tribunal if at all this court is inclined to remand the matter afresh as requested by the learned counsel for the appellant. Learned counsel for the appellants submitted that the driver of the offending vehicle is not a necessary party, in the light of the various decisions of this court.

7. We have considered the rival contentions.

8. On point No.1 there is discussion in paragraph 8. M.A.C.A.Nos.878 & 956 of 2012 -4- After referring to the police reports wherein the driver of the autorickshaw has been arrayed as accused in crime No.108/2005 for offences under Sections 279, 337 and 338 of IPC the Tribunal went on consider the effect of entry in Ext.A14. In paragraph 9 the conclusion arrived after referring to the entry in Ext.A14 is that the appellant in MACA8782012 was found to be in an inebriated

condition scoring two plus points literally suggesting that, he was drunk and incapable of riding the vehicle. On the basis of the said finding it is concluded that the accident occurred not on account of any rashness and negligence on the part of the driver of autorickshaw (Stanley) KL-01/D-3580.

9. The Tribunal has also observed that he ought have been impleaded as a party. According to us, the view taken by the Tribunal cannot be justified. Admittedly the police charge is only against the driver of the autorickshaw. There is no charge against the rider of the motorcycle. It is also submitted by Sri. R.T.Pradeep, learned counsel for the appellant that the Insurance Company has not taken any M.A.C.A.Nos.878 & 956 of 2012 -5- such contention also.

10. Apart from the same on the question whether the driver of the autorickshaw should have been impleaded in the proceedings, as rightly pointed out by the learned counsel for the appellant, going by the decisions of this court he is not a necessary party and if at all any of the parties want to examine him and if specific opportunity is sought for, it is up to the Tribunal to pass appropriate orders after considering various aspects. The same is the dictum laid down in Anuradha Varma v. State of Kerala [1993 (2) KLT777 and in a recent judgment of this court in MACA No.1075/2009 (reported as Oriental Insurance Co. Ltd v. Sobhana Omanakuttan [ILR2015(3) Ker.103] 11. We therefore, are of the view that the approach made by the Tribunal cannot be justified. Therefore, the awards in both the cases are set aside. The cases are remanded back for consideration of all matters afresh and the Tribunal will allow opportunity to adduce evidence to M.A.C.A.Nos.878 & 956 of 2012 -6- the parties, if requested for, before passing fresh awards.

12. Parties will appear on 5.10.2015 before the Tribunal. The Tribunal will expedite the disposal of the cases and the same will be completed within a period of six months from the date of receipt of a certified copy of the judgment. In the light of the fact that we are remanding the matter, we set aside all the findings in the award. The parties will suffer their costs in these appeals. T.R. RAMACHANDRAN
NAIR JUDGE K.P. JYOTHINDRANATH JUDGE shg/