
(2024) 11 KL CK 0025
In the High Court Of Kerala
Case No : MACA No. 1957 Of 2017

Babu Samuel

APPELLANT

Vs

Sadasivan Thampi

RESPONDENT

Date of Decision : 12-11-2024

Acts Referred:

Indian Penal Code, 1860 — Section 279, 338

Citation : (2024) 11 KL CK 0025

Hon'ble Judges : Johnson John, J

Bench : Single Bench

Advocate : R.Ranjini, M.Ashok Kini, V.P. K. Panicker

Final Decision : Allowed

Judgement

Johnson John, J

1. The appellant was the petitioner in O.P.(MV) No. 1273 of 2009 on the file of the Additional Motor Accident Claims Tribunal, Mavelikkara.
2. According to the appellant, on 27.03.2007, at about 5.30 p.m., while he was riding motorcycle bearing registration No. KL-4 S 5701 towards south from Haripad through NH-47, scooter bearing registration No. KL-4 M 8434 ridden by the first respondent in a rash and negligent manner, suddenly entered the National Highway, through a pocket road near KSRTC bus stand and caused to hit the vehicle of the appellant and thereby, the appellant fell down and sustained serious injuries.
3. As per the impugned award, the Tribunal arrived at the finding that the appellant has not succeeded in establishing that the accident occurred due to the negligence of the 1st respondent and therefore, dismissed the petition.
4. Heard both sides and perused the records.
5. The learned counsel for the appellant pointed out that the Tribunal ignored the evidence of PWs 1 and 2 regarding the occurrence and on the basis of Exhibit A3,

refer charge, recorded a finding that the appellant has not succeeded in proving any negligence on the part of the 1st respondent.

6. The appellant was examined as PW1 and the chief affidavit shows that at the time of the accident, he was riding motorcycle through NH-47 towards south from Haripad and the scooter ridden by the 1st respondent in a rash and negligent manner suddenly entered the National Highway from a pocket road and caused to hit the front wheel of his motorcycle and thereby, the accident occurred.

7. PW2 is an occurrence witness examined from the side of the appellant. In the chief affidavit, PW2 also stated that the appellant was riding the motorcycle through the National Highway and suddenly the scooter ridden by the 1st respondent entered the National Highway from a pocket road and caused to hit the motorcycle of the appellant. According to PW2, the 1st respondent who was riding the scooter through a pocket road in a rash and negligent manner entered the National Highway in a negligent manner and hence, the accident occurred.

8. In cross examination also, PW2 reiterated that he witnessed the occurrence and that the accident occurred because of the negligence on the part of the 1st respondent. The Tribunal has not properly appreciated the evidence of PWs 1 and 2 regarding the occurrence. The Tribunal relied on Exhibit A3, refer charge, filed by the police after investigation in spite of the fact that the appellant has adduced independent evidence to challenge the conclusion arrived by the Investigating Officer in Exhibit A3 refer charge.

9. It is also in evidence that the appellant has filed Exhibit A4 protest complaint against Exhibit A3 final report and the Magistrate Court, after recording the statement of the complainant and witnesses, took cognizance of the offences under Sections 279 and 338 IPC against the 1st respondent and on receipt of the summons, the 1st respondent appeared before the Magistrate Court and pleaded guilty. Exhibit A6 is the copy of the judgment of the Judicial First Class Magistrate-I, Harippad in C.C. No 129 of 2008 and it shows that the 1st respondent who pleaded guilty was sentenced to pay a fine of Rs. 500/- each under Sections 279 and 338 IPC.

10. I find that the Tribunal is not justified in ignoring the evidence of PWs 1 and 2 and Exhibits A4 and A6. The evidence of PWs 1 and 2 and Exhibits A4 and A6 would show that the accident occurred only because of the negligence on the part of the 1st respondent.

11. In the aforesaid circumstances, the finding in the impugned award that there was no negligence on the part of the 1st respondent is set aside and it is found that the accident occurred because of the negligence on the part of the 1st respondent. Therefore, I find that the matter is required to be remanded to the Tribunal for determining the compensation payable to the appellant/petitioner.

In the result, this appeal is allowed and the finding in the impugned award that

there was no negligence on the part of the 1st respondent is set aside and it is found that the accident occurred because of the negligence on the part of the 1st respondent. The case is remanded to the Tribunal for determining the reasonable compensation payable to the appellant/petitioner with a direction to the parties to appear before the Tribunal on 13.12.2024. Since the claim petition is of the year 2009, the Tribunal shall take earnest efforts to dispose of the matter within three months from the date of receipt of a copy of this judgment.