

(2012) 04 KL CK 0026
In the High Court Of Kerala
Case No : MACA. No. 1062 of 2007 (D)

Pushpalatha

APPELLANT

Vs

Sethumadhava Menon, Vrindavan Colony, B.I. Sanitha,
33/3733 Chevayoor, Kozhikode (Owner of the Maruthi Omni
Van No. KL-11/K 5769) and The Oriental Insurance Company
Limited, Branch Office, Seema Building, GH Road Kozhikode
(Insurer of the Maruthi Omni Van No. KL-11/K 5769)

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Citation : (2012) 04 KL CK 0026

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : AVM. Salahudin, for the Appellant; K.V. Reshmi, Sri. Mathews Jacob
and Sri. P. Jacob Mathew, for the Respondent

Judgement

Ramakrishna Pillai, J.—Under challenge in this appeal is the dismissal of the claim petition preferred by the appellant before the Motor Accidents Claims Tribunal, Kozhikode. Alleging that the appellant sustained injuries in a road traffic accident on 24/05/02, she approached the Tribunal claiming a sum of Rs. 2 lakhs as compensation. Her case was that while she was travelling by a car, the Maruti Van owned by the 1st respondent which was proceeding behind, hit the rear side of the car.

2. The 1st respondent contended that the car by which the appellant was travelling was going from east to west along the Medical College - Calicut road and when it reached at Parayancheri, the driver of the car suddenly turned the vehicle towards right through a cut in the divider without showing any signal. In that attempt the car hit the divider and capsized. On account of this, van which was proceeding behind the car had to be stopped all on a sudden. In that attempt the van also capsized.

3. The learned Tribunal after considering the entire evidence placed before it

dismissed the claim petition finding that there was no negligence on the part of the driver of the van involved in this case. It is against the above finding of the Tribunal, this appeal has been preferred.

4. We have heard the learned counsel for the appellant as well as the learned counsel for the respondents.

5. During the course of the arguments it was submitted by the learned counsel for the 2nd respondent Insurance Company that the case has been referred by the police as mistake of fact. It is relevant to note that the appellant did not care to enter the witness box to give evidence as to how the accident had occurred. Going by the written statement of the 1st respondent, the accident was due to the negligence of the driver of the car involved in the accident. However, the driver, owner and insurer of the car were not impleaded in the claim petition.

6. The learned counsel for the appellant would submit that the appellant be given an opportunity to implead the owner, driver and insurer of the other vehicle involved in the accident as well as to adduce further evidence to substantiate the case of the appellant.

7. Though we see laches on the part of the appellant in prosecuting her case properly, considering all relevant aspects in the matter, we are of the view that it is only just and proper to afford the appellant an opportunity to substantiate her case before the Tribunal by remitting the case to the Tribunal for fresh disposal. In the result, the appeal is allowed. The award dated 22/11/06 passed by the Motor Accidents Claims Tribunal, Kozhikode in O.P. (MV) No. 126/03 is hereby set aside. The case is remanded to the Tribunal subject to the following conditions:

(a) The appellant shall pay a sum of Rs. 5,000/- towards cost to the Kerala High Court Advocate's Welfare Fund Trust and shall produce receipt before the Tribunal on the date of appearance of the parties before the Tribunal.

(b) The parties shall enter appearance before the Tribunal on 30th May, 2012.

(c) The learned Tribunal shall afford both sides to amend their pleadings if they choose and also to adduce further evidence, if any.

(d) The entire exercise shall be completed by the learned Tribunal within a period of three months from the date of appearance of parties.

(e) If compensation is awarded by the learned Tribunal as per the revised award, the same shall not carry interest from 22/11/06 till the date of the revised award.