

(2016) 03 KL CK 0094
In the High Court Of Kerala
Case No : M.A.C.A. No. 1989 of 2006

Raju

APPELLANT

Vs

K.K. Damodaran and Others

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 170

Citation : (2016) 03 KL CK 0094

Hon'ble Judges : P.N. Ravindran and K. Ramakrishnan, JJ.

Bench : Division Bench

Advocate : R. Bindu and Prasanth M.P., Advocates, for the Appellant;

Final Decision : Partly Allowed

Judgement

K. Ramakrishnan, J.—1. The appellant is the claimant in O.P.(MV) No. 576 of 2001 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha which was filed claiming compensation for the injuries sustained by him in a motor vehicle accident occurred on 25.10.2000 at about 11 a.m. He was returning from Thrissur in a motor cycle and when it reached near Puthukad, an autorickshaw with registration No. KL8/885 owned by the first respondent, driven by the second respondent and insured by the third respondent came from behind and hit against his motor cycle. Due to that, he fell down and sustained severe injuries. He was an ice cream vendor and getting an income of Rs. 4,000/- per month. He sustained severe injuries. The claim petition was filed claiming a total compensation of Rs. 3 Lakhs on various heads.

2. Respondents 1 and 2 remained absent. The third respondent filed written statement admitting the insurance of the vehicle but denied the occurrence of the accident involving the vehicle therein. They also contended that the accident occurred in a different circumstance and as such he is not entitled to get any compensation. Further, he has no driving licence to drive the vehicle and he sustained injuries due to his own negligence. So, they prayed for dismissal of the claim petition.

3. Since respondents 1 and 2 did not appear, the third respondent filed I.A. No. 1572 of 2005 under section 170 of the Motor Vehicles Act and permission was granted to contest the case. The appellant was examined as PW1, one witness was examined as PW2 and the Doctor who treated the appellant was examined as PW3. Exts.A1 to A11 series were also marked on his side. No evidence was adduced on the side of the respondents.

4. After considering the evidence on record, the tribunal found that the claimant has failed to prove the accident as claimed by him and there is doubt regarding the genuineness of the accident and dismissed the application. Aggrieved by the same, the present appeal has been preferred by the appellant/claimant before the tribunal.

5. Heard Shri R. Bindu Sasthamangalam, learned counsel for the appellant and Shri Geo Kalliath, learned counsel for the third respondent insurance company.

6. Learned counsel for the appellant submitted that the evidence of PWs. 1 and 2 will go to show that the accident occurred as alleged by the claimant and the delay in registering First Information Report has been explained. Further, a criminal case was registered and the driver had appeared and pleaded guilty which is evident from Ext. A7 and there is no contra evidence adduced on the side of the respondents to prove that there was no such accident occurred. So, according to the learned counsel, the tribunal was not justified in dismissing the application. It was also submitted that the appellant is entitled to get just and reasonable compensation as well which the tribunal ought to have quantified.

7. On the other hand, learned counsel for the insurance company submitted that there is contradictions in the evidence of PWs. 1 and 2 regarding the purpose for which they have gone to Thrissur coupled with the delay in registering First Information Report and non production of the documents from the Medical College Hospital, Thrissur and so the tribunal was perfectly justified in coming to the conclusion that the accident was not occurred as alleged in the claim petition and rightly dismissed the claim petition. Further, he sustained only simple injuries and the compensation claimed is exorbitant.

8. The case of the appellant was that he was returning from Thrissur in his motor cycle and when he reached the place of occurrence, the autorickshaw came from behind and hit his motor cycle. In order to prove his case the appellant himself was examined as PW1 and one witness was examined as PW2. PW1 had submitted that he went to Thrissur in connection with a church festival and after selling ice cream while he was returning to his native place, the accident occurred. It is also brought out in evidence that though the autorickshaw did not stop there, the people in the locality stopped the autorickshaw and then he was taken to the Medical College Hospital, Thrissur and since there was none to look after him there, he was taken to M.B.M.M. Hospital, Kothamangalam on the next day and he was admitted there. He was under the impression that intimation would have been sent from the hospital to Police. Since there was no intimation

given, after discharge from the hospital he came to the Police Station, gave statement and on that basis, a crime was registered. The evidence of PW1 was corroborated by the evidence of PW2 who also accompanied the injured on that day and he was coming in a bicycle and he happened to see the accident and immediately he along with other people had taken the injured to the Medical College Hospital, Thrissur. Since there was none to look after the injured at Thrissur, he was taken to M.B.M.M. Hospital, Kothamangalam and admitted there. It is true that there was some discrepancy in the evidence of PWs. 1 and 2 regarding the period of the festival said to have been attended by these persons. But that alone is not sufficient to disbelieve their evidence. Further, the autorickshaw is from Thrissur. If the autorickshaw had not involved in the accident, then Puthukkad Police would not have registered a case and conducted investigation and filed a final report against the driver of the autorickshaw. They could have reported the case as false which has not been done. Further, if the accident had not occurred, the driver of the autorickshaw would not have appeared before the criminal court and pleaded guilty and suffered a conviction which is evident from Ext. A7 certified copy of the judgment in C.C. No. 409 of 2001 of the Judicial Magistrate of First Class, Irinjalakuda. Further, no contra evidence has been adduced on the side of the insurance company to disprove these facts as well.

9. There is no proof of collusion between respondents 1 and 2 and the appellant for filing a false claim involving the autorickshaw in this case. Further, in the decision reported in *New India Assurance Company Ltd. v. Pazhaniammal and others* (, 2011 (3) KLT 648), this court has held that as a general rule, production of the Police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under section 166 of the Motor Vehicles Act. If the Police charge sheet does not satisfy their judicial conscience, tribunals can reject it and can call upon the parties to adduce oral evidence to establish the alleged negligence. In this case, apart from production of Police records, the appellant had gone to the witness box and given evidence as PW1 and one witness was also examined as PW2 to prove the accident. Further, it is seen from Ext. A5 wound certificate that he was taken to M.B.M.M. Hospital, Kothamangalam on 26.10.2000 by a group of people. It is true that the fact that it was a case referred from Medical College Hospital, Thrissur was not mentioned in the wound certificate. But immediately after discharge from the hospital, he went to the Police station and gave a statement and it was on that basis a crime was registered. So, the reason given by the appellant for non registration of the crime immediately after the accident is convincing as well, as he was under the impression that Police would have registered a case on the basis of the intimation given by the hospital authorities. Though it was noted as road traffic accident in the wound certificate, no intimation was given from the hospital to the Police. So, the tribunal was not justified in coming to the conclusion that the accident as alleged did not happen and so the dismissal of the claim petition is unsustainable in law. So, we are inclined to set aside the award and on the basis of the

evidence, we hold that the accident occurred due to the negligent driving of the autorickshaw by the second respondent and there was no negligence on the part of the appellant.

10. As regards the quantum of compensation is concerned, the appellant is aged 47 years at the time of accident and claims to be an ice cream vendor getting a monthly income of Rs. 4,000/-. But he had not produced any document to prove this fact. Further, the accident occurred in the year 2000. So, we feel that an amount of Rs. 2,500/- can be taken as the monthly income. Ext. A5 wound certificate shows that he sustained fracture right ankle and he was treated from 26.10.2000 to 10.11.2000 at M.B.M.M. Hospital, Kothamangalam. Ext. A10 disability certificate coupled with the evidence of PW3, the Doctor will go to show that nailing was done and there is some restriction in movement and the disability was assessed at 8%. He had not mentioned as to how far it will affect his earning capacity. So, the disability cannot be taken into account for the purpose of assessing compensation under the head loss of earning capacity but it can be taken into consideration for the purpose of assessing compensation under the head loss of amenities in life.

11. Considering the nature of injuries, he could not have worked for at least four months. So, he is entitled to get an amount of Rs. 10,000/- under the head loss of earnings and we award that amount under that head. Ext. A11 series medial bills show that he has spent about Rs. 13,500/- towards medical expenses. So, we award an amount of Rs. 13,500/- towards medial expenses. He was treated as inpatient from 26.10.2000 to 10.11.2000 at M.B.M.M. Hospital, Kothamangalam. So, we award an amount of Rs. 3,000/- towards bystander's expenses and Rs. 3,000/- towards transport to hospital and extra nourishment. Considering the nature of injuries sustained, we are inclined to award a sum of Rs. 15,000/- towards compensation for pain and suffering. We are not inclined to grant any amount towards loss of earning capacity. Considering the nature of injuries sustained and the disability described in Ext. A10 coupled with the evidence of PW3, we feel that it may have some impact on his personal life. So, we are inclined to grant a sum of Rs. 15,000/- under the head loss of amenities in life. Ext. A8 discharge certificate shows that he had to undergo another operation for removal of implants for which he required an amount of Rs. 9,000/-. So, considering this, we feel that an amount of Rs. 9,000/- can be granted under the head future medial expenses and we grant the same. In total, the appellant will be entitled to get an amount of Rs. 68,500/- as compensation which respondents 1 to 3 are jointly and severally liable to pay and the third respondent insurance company as insurer to indemnify the insured, is liable to deposit the amount with interest at 7.5% per annum from the date of petition till payment. Three months time is granted to deposit the amount.

The award passed by the tribunal dismissing the claim petition is set aside and the appeal is allowed in part as mentioned above. The parties are directed to bear their respective costs.