Aneesh.V.P Vs Vishnu.V.S

Court: High Court Of Kerala

Date of Decision: Jan. 23, 2025

Acts Referred: Indian Penal Code, 1860 â€" Section 279, 337, 338
Motor Vehicles Act, 1988 â€" Section 166

Hon'ble Judges: Johnson John, J

Bench: Single Bench

Advocate: E.N.Vishnu Namboodiri, Dileep P V, K.Vidyasagar, Rajan P.Kaliyath

Final Decision: Allowed

Judgement

Johnson John, J

1. This appeal is filed by the claim petitioner in O.P.(MV) No. 839 of 2010 on the file of the Motor Accident Claims Tribunal, Thiruvananthapuram

2. According to the claim petitioner, on 27.05.2009, while he was riding motorcycle from Attingal to Mananak, another motorcycle ridden by the 1st

respondent in a rash and negligent manner from the opposite side caused to hit his motorcycle and thereby, he fell down and sustained serious injuries.

The 1st respondent is also the owner of the offending vehicle and the 2nd respondent is the insurer.

3. Before the Tribunal, PW1 examined and Exhibits A1 to A19 were marked from the side of the petitioner, and from the side of the respondents,

Exhibits B1 and B2 were marked.

4. After trial and hearing both sides, the Tribunal arrived at a finding that the petitioner has not succeeded in establishing that he sustained injuries in a

motor vehicle accident and that there occurred an accident as alleged and hence, the petition was dismissed.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents.

6. The learned counsel for the appellant argued that a perusal of Exhibit B1 charge sheet and Exhibit B2 FIR in Crime No. 698 of 2009 would show

that there occurred an accident as alleged on 27.05.2009 and that the police after investigation, chargesheeted the 1st respondent herein for the

offences punishable under Sections 279 337 and 338 IPC. It is also argued that the petitioner was examined as PW1 to prove the occurrence.

7. But, the learned counsel for the respondent insurance company pointed out that as per Exhibits B1 and B2, the fracture is on the left leg knee. But,

the evidence of PW1 and the treatment records would show that the fracture is on the right leg and that the petitioner has not examined any

independent witness to prove the occurrence and in view of the said contradiction in the evidence, there is no reason to interfere with the finding of

the Tribunal.

8. In New India Assurance Co.Ltd. v. Pazhaniammal and Others (2011(3) KHC 595), this Court 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. In the said

decision, it was also held that if any one of the parties do not accept such charge sheet, the burden must be on such party to adduce oral evidence and

if oral evidence is adduced by any party in a case where charge sheet is filed, the Tribunals should give further opportunity to others also to adduce

oral evidence and in such a case, the charge sheet will pale into insignificance and the dispute will have to be decided on the basis of the evidence. It

was further held that in all other cases, such charge sheet can be reckoned as sufficient evidence of negligence in a claim under Section 166 of the

Motor Vehicles Act.

9. The decision of the Hon'ble Supreme court in Mathew Alexander v. Muhammed Shafi (2023 INSC 621) shows that strict proof of an accident

caused by a particular vehicle in a particular manner need not be established by the claimants and that the claimants need only to establish their case

on the touchstone of preponderance of probabilities. In the said case, it was also held that the standard of proof beyondÃ, reasonableÃ, doubtÃ,

cannotÃ, beÃ, appliedÃ, whileÃ, consideringÃ, the petition seeking compensation on account of death or injury in a road traffic accident.

10. The learned counsel for the appellant also cited the decision of this Court in Krishnakumar v. Madhu [2019 (3) KLT 274], wherein it was held

that in the event the Tribunal finds that the chargesheet laid by the Police which was placed on record to prove the accident and the negligence on the

part of the indictee is a collusive one or that the same cannot be accepted for other cogent reasons, it is obligatory on the part of the Tribunal to record

a finding to that effect and call upon the claimant to adduce independent evidence of the occurrence and the negligence attributed against the indictee,

before dismissing the claim petition for want of evidence, with a view to give effect to the statutory provisions in its true spirit and to avoid

unnecessary delay in the disbursal of compensation in genuine cases.

11. The learned counsel for the respondent argued that the appellant has not examined any independent witness to prove the occurrence and

negligence alleged against the 1st respondent. Considering the circumstances, I am of the view that the Tribunal ought to have given an opportunity to

the parties to examine independent witnesses to prove the occurrence and the negligence attributed against the 1nd respondent and therefore, the

matter has to be remanded to the Tribunal.

12. In the result, the impugned award is set aside and the case is remanded for fresh disposal after affording the parties an opportunity to adduce

further evidence to prove the occurrence and negligence attributed against the 1st respondent. The parties are directed to appear before the Tribunal

on 25.02.2025.

This appeal is allowed as above.