

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 1ST DAY OF JUNE 2022 / 11TH JYAISHTA, 1944

MACA NO. 2599 OF 2010

**AGAINST THE ORDER/JUDGMENT IN OPMV 1292/2006 OF MOTOR ACCIDENT
CLAIMS TRIBUNAL, ERNAKULAM**

APPELLANT/PETITIONER:

**T.A.ANSAD
AGED 25 YEARS
S/O.ABDUL REHMAN,
THAZHATHUVALAPPIL HOUSE,
KALADI.P.O, MANNOOR DESOM,
MALAPPURAM DISTRICT.
BY ADV SRI.K.V.RAJAN**

RESPONDENTS/RESPONDENTS:

- 1 SANJAY KUMAR THUNJHUNWALA
13, ARMEMIAN STREET,
CALCUTTA-700 001, WEST BENGAL.**
- 2 P.VIJESH KUMAR
S/O.VIKRAMAN NAIR,
VRINDAVANAM, SHINE ROAD,
VYTTILA P.O., KOCHI - 682 019**
- 3 ORIENTAL INSURANCE CO.LTD
THAPAR HOUSE, 25-B-T-MAHARAJ ROAD,
CALCUTTA-700 001.
BY ADVS.
GEORGE A.CHERIAN
ALEXY AUGUSTINE
GEORGE CHERIAN (SR.)**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 31.05.2022, THE COURT ON 01.06.2022
DELIVERED THE FOLLOWING:**

“CR”

JUDGMENT

Award in O.P.(MV) 1292/2006 dated 22.06.2010 on the files of the Motor Accidents Claims Tribunal, Ernakulam is under challenge in this appeal at the instance of the petitioner before the Tribunal. Respondents herein are the respondents before the Tribunal.

2. An interesting question emerges for determination is; Can contributory negligence be found against the driver of the other vehicle involved in the accident solely relying on the recitals in the scene mahazar, ignoring the police charge, attributing negligence only against one driver, in accident cases where two vehicles involved?

3. The short facts of the case :- The appellant, who suffered injuries in consequence of a motor accident occurred on 27.11.2005 at 10.30 p.m., approached the Tribunal and claimed compensation to the tune of Rs.2,32,500/- attributing negligence against the driver of the car bearing registration

No.WB 2/L-1243 driven by the second respondent.

4. While opposing the claim, the Insurance Company admitted the policy, but disputed the accident by denying negligence against the second respondent as well as by alleging contributory negligence on the part of the petitioner, who also was riding a motor cycle bearing registration N.KL-2 6-B/4394.

5. During evidence, the Tribunal marked Exts.A1 to A12 on the part of the petitioner and no evidence adduced from the side of the respondents.

6. It is submitted by the learned counsel for the appellant/petitioner that even though the Police laid charge against the second respondent/the driver of the car bearing registration No.WB-2/L-1243, the learned Tribunal found contributory negligence on the part of the petitioner and thereby fixed the percentage at 50. Consequently, award was reduced by 50%. It is submitted by the learned

counsel for the appellant further that the Tribunal merely relying on the recitals in the scene mahazar found 50% contributory negligence without insisting for convincing evidence to hold so, despite the fact that the police laid charge against the second respondent. According to the learned counsel for the appellant the finding of the Tribunal in the matter of contributory negligence is erroneous and the same is liable to be set aside. He submitted further that the appellant is satisfied with the said course of action and the appellant does not want any increase in the award.

7. The learned counsel for the Insurance Company opposed the said contention. However, the learned counsel also could not justify 50% contributory negligence on the part of the petitioner.

8. Thus the pertinent question arises herein is; Can contributory negligence be found against the driver of the other vehicle involved in the accident solely relying on the

recitals in the scene mahazar, ignoring the police charge, which attributes negligence only against one driver, in accident cases where two vehicles involved. In this case, indisputably, as per Ext.A8, the Police laid charge against the second respondent, the driver of the car. But the Tribunal given much emphasis to the recitals in the scene mahazar to disbelieve the police charge and to find contributory negligence against the petitioner. It is true that in cases of collision between vehicles, possibility of contributory negligence could not be ruled out. But in order to find to contributory negligence, convincing evidence is necessary. If the police charge attributes contributory negligence, the same can be relied on, to find contributory negligence. But in cases where the police charge attributes negligence against the driver of one vehicle involved, unless there is no other independent evidence adduced or available to prove the contributory negligence, mere recitals in the scene mahazar would not suffice.

9. In view of the above discussion, I have no hesitation to hold that when contributory negligence is alleged, it is the duty of the party, who alleges the same to prove the same, for which, no doubt, final report can be given emphasis. If the final report says that the accident is the contribution of negligence on the part of the driver of one of the vehicle, in the absence of any other convincing and cogent evidence, contributory negligence could not be found, merely relying on the recitals in the scene mahazar. Therefore, in the case on hand, the Tribunal went wrong in fixing the contributory negligence. Therefore, it has to be held that the Tribunal fixed contributory negligence at 50% without support of any convincing and cogent evidence, that too overlooking the Police charge otherwise. In view of the matter, the finding entered into by the Tribunal fixing 50% contributory negligence against the petitioner is illegal and the same is accordingly set aside.

Consequently, the appeal stands allowed and it is held that the Insurance Company is liable to deposit Rs.1,16,250/- fixed by the Tribunal along with the interest allowed by the Tribunal as compensation in the name of the petitioner with liberty to the petitioner to release same on deposit.

Sd/-

**A. BADHARUDEEN
JUDGE**