IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

WEDNESDAY, THE 5TH DAY OF JUNE 2024 / 15TH JYAISHTA, 1946

MACA NO. 4003 OF 2019

OPMV NO.381 OF 2012 OF III ADDITIONAL MACT, THRISSUR

APPELLANT/PETITIONER:

RAJU.K.J., AGED 43 YEARS
S/O.JOSE.K.K, KOLLANNUR(KOTTEKKATTUKARAN) HOUSE,
KANJANI.P.O. THRISSUR DISTRICT-680612

BY ADVS.
C.HARIKUMAR
SRI.RENJITH RAJAPPAN

RESPONDENTS/RESPONDENTS:

1 DEEPAK.T.V., S/O.VINCENT, THONATH HOUSE,
KANDASSANKADAVU.P.O. THRISSUR-680613(OWNER OF KL-08 AL-1117 MOTOR CYCLE)

2 LIJO, S/O.JOY, ELUVATHINGAL HOUSE, THANIPADAM DESAM,
KARAMUCK.P.O, THRISSUR-680612(DRIVER)

3 THE NEW INDIA ASSURANCE COMPANY LIMITED
SSN SHOPPING COMPLEX, THEMPLE ROAD, NATTIKA.P.O,
TRIPRAYAR THRISSUR-680566

BY ADVS.
SMT.V.O.PHILOMINA
SRI.VIJU THOMAS
SMT.M.MEENA JOHN
SMT.MIKHIYA ANNA VIJU

OTHER PRESENT:

ADV.SRI VIJU THOMAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR HEARING ON 21.05.2024, THE COURT ON 05.06.2024 DELIVERED THE FOLLOWING:

"CR"

JUDGMENT

The appellant is the claimant in OP(MV) No. 381 of 2012 on the file of the Additional Motor Accidents Claims Tribunal, Thrissur, a petition filed under Section 166 of the Motor Vehicles Act, 1998, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in a motor accident. The respondents herein were the respondents before the tribunal.

2. The case of the appellant/claimant is that on 28.08.2011 at 7.50 pm, while he was riding a motorcycle bearing Reg.No.KL-08/AJ-9516 through the Vilakkumkal-Vadakke Karamuck public road, a motorcycle bearing Reg.No.KL-08/AL-1117 ridden by the second respondent and owned by the first respondent came in a rash and negligent manner and hit against the appellant causing him grievous injuries. Respondents 1 and 2 remained *ex parte.* The third respondent insurer filed a written statement admitting the policy coverage for the offending vehicle, however, disputing the compensation claimed as excessive and exorbitant. It was

contended that the second respondent was not having a valid driving licence and the police has already charge sheeted the second respondent for the offences under Sections 279 and 338 of the Indian Penal Code and Section 3(1) r/w Section 181 of the Motor Vehicles Act (for short, “the MV Act”). It was further contended that there was contributory negligence on the part of the appellant.

3. Before the tribunal, the evidence consisted of oral testimony of PW1, and documentary evidence of Exts.A1 to A11 on the side of the appellant/claimant. Exts.B1 to B4 were marked on the side of the respondent insurer. The tribunal, after analysing the pleadings and materials on record, held that the appellant is entitled to get Rs.1,46,375/- as compensation under different heads. However, finding that the appellant was not having a valid driving licence at the time of the accident and the scene of occurrence is in the middle of the road as per Ext.A10 scene mahazar, attributing contributory negligence on the part of the appellant, the tribunal directed that only 50% of the amount awarded, Rs.73,188/-, need be remitted by the respondent insurer. The

respondent insurer was permitted to recover the amount so paid to the appellant from respondents 1 and 2 since there was violation of policy condition on account of the fact that the second respondent, who was the rider of the offending vehicle, was not having a valid driving licence. Challenging the finding of the tribunal, attributing contributory negligence on the part of the appellant and reducing 50% of the amount awarded, the appellant has come up in appeal.

4. Heard the learned counsel for the appellant/claimant and the learned Standing Counsel for the respondent insurer.

5. The learned counsel for the appellant, pointing out to Annex.A8 attested copy of the driving licence, submitted that the appellant had obtained a driving licence on 10.06.1994 for 20 years, which was valid up to 09.06.2014, and since the accident occurred on 28.08.2011, he was having a valid driving licence at the time of the accident. The learned counsel referred to Section 14(2)(b) of the MV Act and submitted that as per the said provision, a driving licence is issued for 20 years for persons upto the age of 40 years. It

was further pointed out that on a reading of Annex.A10 scene mahazar, it can be seen that the accident was not in the middle of the road, but on the left side. According to the learned counsel, the tribunal cannot attribute contributory negligence solely relying on the scene mahazar.

6. *Per contra*, the learned Standing Counsel for the respondent insurer submitted that Annex.A8 driving licence produced by the appellant does not show that he was having a valid driving licence at the time of the accident. It was further submitted that the scene mahazar also very clearly shows that the accident was in the middle of the road and not on the left side. Hence, according to the learned Standing Counsel, the findings of the tribunal are correct.

7. The learned counsel for respondents 1 and 2 submitted that respondents 1 and 2 are coolie workers and the accident occurred due to negligence on the part of the appellant as well and the second respondent sustained more grievous injuries in the accident. It was also submitted that the amount already awarded by the tribunal was paid by availing loan from others.

8. The main issues to be considered in appeal are;

a) Whether the appellant was having a valid driving licence at the time of the accident? and

b) Whether contributory negligence can be attributed on the part of the appellant?

9. The first issue that has to be decided is whether the appellant was having a valid driving licence at the time of the accident. On a perusal of Annex.A8 driving licence, it is seen that the date of issue is 10.06.1994. The date of birth of the appellant is 24.04.1975. So, at the time of the issuance of driving licence, he was only 19 years. According to the learned counsel for the appellant, as per Section 14(2)(b) of the Act, the driving licence is issued for 20 years for persons upto the age of 40 years. In this context, it is relevant to extract Section 14(2)(b) of the Act, which reads thus;

> “14. Currency of effectiveness of licences, to drive motor vehicles.-(1) xxx
>
> (2) A driving licence issued or renewed under this Act shall,-
>
> (a) xxx
>
> (b) in the case of any other licence,-

> (i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of forty years on the date of issue or, as the case may be, renewal thereof,-
>
> (A) be effective for a period of twenty years from the date of such issue or renewal; or
>
> (B) until the date on which such person attains the age of forty years, whichever is earlier."

The above provision clearly states that the driving licence is issued for a period of 20 years for persons, who have not attained the age of forty years on the date of issue. Hence, the appellant, being 19 years at the time of issuing driving licence, was having a valid licence up to 09.06.2014. Obviously, the renvewal of the driving licence is required only after 20 years and as could be seen from Annex.A8 renewed licence, the appellant renewed the licence on 10.06.2014, which is valid for a period of ten years, i.e., from 10.06.2014 to 23.04.2025. Hence, it can be presumed, without any doubt, that on the date of the accident on 28.08.2011, the appellant was having a valid driving licence. Therefore, the finding of the tribunal that the claimant was not having a valid driving licence at the time of the accident is unsustainable.

10. The second issue is with regard to the finding of

the tribunal, attributing contributory negligence on the part of the appellant. Relying on Annex.B3 copy of B charge, the tribunal arrived at the conclusion that the appellant contributed to the occurrence of the accident. The police had laid charge sheet against the appellant for the offences under Sections 279 and 338 of IPC and Section 3(1) r/w Section 181 of the Act. Section 3(1) of the Act reads as follows;

> "3. Necessity for driving licence.- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of Section 75 unless his driving licence specifically entitles him so to do."

11. The learned counsel for the appellant submitted that though the police made the appellant an accused by including B charge against him, the tribunal refused to accept the final report and there was no charge against him under Section 279, 338 of IPC and Section 3(1) r/w Section 181 of the MV Act. The tribunal found, relying on Annex.A10 scene mahazar, that the accident occurred in the middle of the road and hence, there was contributory negligence (50%) on the

part of the appellant. The learned counsel for the appellant, bringing attention to Annex.A10 scene mahazar, tried to convince this Court that the accident occurred not in the middle of the road, but on the left side. It may be true that the accident did not occur in the middle of the road, but the issue to be considered here is whether the scene mahazar alone can be taken into consideration for attributing negligence on the part of the appellant. It was held in **Jiju Kuruvila & Others** v. **Kunjunjumma Mohan** [2013 (9) SCC 166] that no interference can be drawn on the basis of scene mahazar for arriving at contributory negligence. Similarly, in **New India Assurance Co. Ltd. v. Pazhaniammal** [(2011) (3) KLT 648], it was held that production of charge sheet is *prima facie* sufficient evidence of negligence for the purpose of a claim under Section 166 of the MV Act. Here, in this case, it is an admitted fact that the final report including B charge against the appellant was refused to be accepted by the tribunal and there was no charge against the appellant. Hence, merely relying on the scene mahazar, it may not be possible for the tribunal to arrive at a conclusion that there was contributory negligence on the part of the appellant. If the police charge attributes

contributory negligence, the same can be relied on by the tribunal, but, here, in this case, there is only a scene mahazar available. In the absence of any other convincing substantial evidence, contributory negligence cannot be attributed relying solely on the scene mahazar. Hence, the finding of the tribunal without any supporting evidence, attributing contributory negligence at 50%, is found to be illegal and is liable to be set aside.

12. The two issues raised in this case are found in favour of the appellant.

Accordingly, the appeal stands allowed. The finding of the tribunal fixing contributory negligence on the part of the appellant at 50%, is set aside. It is held that the respondent insurer is liable to deposit the amount of Rs.73,188/-, which is the remaining 50% of the amount out of the total compensation of Rs.1,46,375/- awarded by the tribunal, with interest @ 6% per annum from the date of petition till realization and proportionate costs. The respondent insurer shall deposit the said amount together with interest and costs within a period of two months from the date of receipt of a

certified copy of this judgment. The appellant shall furnish copies of the PAN Card, ADHAAR Card and bank details before the respondent insurer within a period of one month so as to enable the insurance company to make the deposit as ordered above. In case of failure to furnish details as above, it shall be open for the insurance company to deposit the said amount before the tribunal. Upon such deposit being made, the entire amount shall be disbursed to the appellant at the earliest in accordance with law. It is made clear that the respondent insurer shall recover the amount so paid to the appellant from respondents 1 and 2.

SD/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-