Kerala High Court
Roy Gee Varghese vs Smt.Rajalakshmi on 16 October, 2006

IN THE HIGH COURT OF KERALA AT ERNAKULAM

MFA No. 1331 of 2000()

1. ROY GEE VARGHESE
... Petitioner

Vs

1. SMT.RAJALAKSHMI
... Respondent

For Petitioner :SRI.V.CHITAMBARESH

For Respondent :SRI.GEO PAUL

The Hon'ble MR. Justice J.B.KOSHY
The Hon'ble MR. Justice M.N.KRISHNAN

Dated :16/10/2006

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J.B. KOSHY & M. N. KRISHNAN, JJ

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M.F.A. NO. 1331 OF 2000

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Dated this the 16th day of October, 2006

JUDGMENT

Krishnan, J This appeal is preferred against the award of the Motor Accidents Claims Tribunal, Thrissur in O.P.M.V. No. 1630/1997. The claimant was a rider of motor byke bearing Registration No. KLG 8537 and when it reached Kuthiran it hit on the back of a lorry bearing Registration No. KLH 606 thereby resulting in serious injuries to him.

2. The Tribunal found that the claimant had hit on the back of the parked lorry and therefore found that he had contributed 50 per cent to the accident and thereafter proceeded to fix the compensation and after deducting 50 per cent, granted him a compensation of Rs. 27,700/-. The learned counsel

for the appellant challenges the finding of the Tribunal on the question of negligence as well as on the quantum. It can be seen that the claimant was proceeding in the motor byke and at the time of climbing Kuthiran he had hit on the back of a parked lorry and thereby sustained injuries. It is a settled principle and as per the rules the driver of the vehicle is expected to keep atleast a distance of 10 mts. from the on moving vehicle. If the motor cyclist had taken care to observe that, certainly he could have averted the accident. Therefore, it has been held in many cases that when hit is from behind there is a presumption of negligence on the part of the person who comes and hit from behind. There is nothing to show that the lorry was stopped all on a sudden and therefore the motor cycle hit on the back of the lorry. In such circumstances, it has to be held that the finding of the Tribunal that the claimant has contributed 50 per cent to the accident does not require any interference. So far as the quantum of compensation is concerned, the claimant has sustained a fracture and dislocation of the left wrist.

No disability certificate was produced by him. Taking into consideration the medical records available the Tribunal granted a sum of Rs.20,000/- towards medical treatment and other incidental expenses. It also found that the fracture and dislocation would have caused inconvenience and therefore awarded Rs.

10,000/- towards loss of amenities and enjoyment in life. Even in the absence of disability certificate the factum of fracture was considered and an amount of Rs.

10,000/- was awarded under the head of disability as well. Therefore the Tribunal had only taken a liberal approach to fix the compensation and there is nothing to interfere with the fixation of compensation as well.

From these discussions we hold that finding of contributory negligence as well as on the quantum of compensation fixed by the Tribunal does not require any interference. Therefore the M.F.A is dismissed.

J.B. KOSHY, JUDGE.

M.N. KRISHNAN, JUDGE.

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