

Kerala High Court

Mr. Saifudeen vs Mr. Prabhakar Kamath on 16 December, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

MACA.No. 1342 of 2005()

1. MR. SAIFUDEEN, S/O. ABOOBACKER,
... Petitioner

Vs

1. MR. PRABHAKAR KAMATH, H.NO.39/330 A,
... Respondent

2. MR. KARTHIKEYAN, S/O. KRISHNAN,

3. THE ORIENTAL INSURANCE CO.LTD.,

For Petitioner :SRI.K.JANARDHANAN

For Respondent :SRI.MATHEWS JACOB (SR.)

The Hon'ble the Acting Chief Justice MR.J.B.KOSHY

The Hon'ble MR. Justice THOMAS P.JOSEPH

Dated :16/12/2008

O R D E R

J.B.KOSHY,Ag.C.J & THOMAS P. JOSEPH, J.

M.A.C.A.No.1342 of 2005

Dated 16th December, 2008

JUDGMENT

Koshy,Ag.C.J.

Appellant sustained very serious injuries in a motor accident while he was travelling as a pillion rider in a motor cycle on 28.4.1997. He was admitted in the City Hospital. In Ext.A4 wound certificate it is stated as follows:

"History of fall from a motor bike. He was riding at Pulleppady at 9 a.m."

There was no statement that the a motor accident was caused by the mini lorry hitting the motor cycle. There is no mention in the wound certificate about a Road Transport Accident. Even though it is stated that F.I.R. was registered only on 3.5.1997 and it is true that draft charges were prepared by the police, they took five days to register the F.I.R. The incident is alleged to have occurred in a busy area at Pulleppady junction in Kochi City. If an accident occurred in such a busy junction, it would have been immediately reported to the police. However, AMVI's report on the mini lorry or the motor cycle on which the appellant was travelling were not produced to find out whether an accident occurred or not. Before the Tribunal, second respondent driver of the alleged offending vehicle, mini lorry was deleted from the party array. The main tortfeasor is the driver. The owner of the vehicle had only vicarious liability and insurance company had only to indemnify him in view of the insurance policy. Without the driver on the party array, Tribunal also cannot grant compensation finding him guilty of negligence. In the appeal also notice was not served on the driver. Even though opportunities were given, defects are not cured so far. In these circumstances, we are of the opinion that there is no material to establish that the injuries sustained by the appellant arose out of a motor accident involving the mini lorry.

The appeal is dismissed.

J.B.KOSHY ACTING CHIEF JUSTICE THOMAS P. JOSEPH JUDGE tks