

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

MACA.No. 930 of 2004 ()

AGAINST THE AWARD IN OPMV 1805/1997 of SPL.C SPE/CBI-I&3 ADD.DC.ADD
MACT,EKM DATED 18-09-2003

APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE COMPANY LIMITED,
MATTANCHERY NOW REPRESENTED BY ITS MANAGER
REGIONAL OFFICE, METRO PALACE, KOCHI-18.

BY ADV. SRI.MATHEWS JACOB (SR.)

RESPONDENT/PETITIONER AND RESPONDENTS 1 & 2:

1. M.S.SOMAN, S/O.SUKUMARAN, MULLASSERY
HOUSE, NEAR VIMALAGIRI CHURCH, MALAYATTOOR.

2. K.C.ABRAHAM S/O. CHACKO,
CHERUVALLIL HOUSE, IRUMPANAM P.O, VIA TRIPUNITHURA.

3. A.BIJU S/O. AYYAPAN, MELEKKUDY HOUSE,
PIRAKUNNAM KARA, KUTTAMANGALAM VILLAGE
KOTHAMANGALAM TALUK. **(DELETED FROM THE PARTY ARRAY AT THE RISK OF
THE APPLICANT AS PER ORDER DATED 30.10.2013 IN I.A. NO. 2876/11
IN MACA NO. 930/2004)**

R1 BY ADV. SRI.ANIL S.RAJ (FOR CAVEATOR)

R2 BY ADV. SRI.SUNU P.JOHN

BY ADV. SRI.P.K.MURALEEDHARAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
BABU MATHEW P JOSEPH, JJ.
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M.A.C.A. No. 930 of 2004  
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Dated, this the 13th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

The Award passed by the MACT in O.P.(MV) No. 1805 of 1997 is under challenge at the instance of the insurance company.

2. The basic question to be considered and decided is whether the claimant who was travelling on the platform of the lorry bearing No. KL 7 G 3967 is liable to be covered under the policy. The Tribunal considered the matter and an Award was passed on 18.11.2003 directing the Insurance Company to pay a total compensation of Rs.2,53,000/- with proportionate cost and interest at the rate of 9 % p.a. from the date of petition. This is subjected to challenge by the Insurance Company, raising various reasons.

3. During the course of hearing, the learned counsel appearing for the Insurance Company submits that altogether 13 passengers

were travelling as gratuitous passengers on the platform of the vehicle, which capsized on 24.02.1997, giving rise to several claims, wherein the Awards were passed by the Tribunal. Some of the cases were already been taken up before this Court by the Insurance Company by way of appeals and after analysing the merit involved, a specific finding was rendered by a Division Bench of this Court in M.A.C.A. No. 1729 of 2004 (vide common judgment dated 31.01.2006 in MACA Nos.1393 of 2004 and connected cases) to the effect that the concerned policy did not cover the liability in respect of gratuitous passengers. A factual finding was arrived at; that there were no goods in the lorry, and that nobody was travelling in the vehicle in the capacity as owner accompanying the goods. By virtue of the specific finding as above, the appeal filed by the Insurance Company was allowed and the Insurer was exonerated, making it clear that claimants would be at liberty to proceed against the others who were made jointly and severally liable for payment of the compensation

4. Coming to the instant case, the third respondent, who was the driver of the vehicle has already been deleted from the party array, as per the order dated 31.10.2013 in I.A. No. 2876 of

2011. It is however seen that the second respondent, who happens to be the owner of the vehicle, is no more and the legal heirs are still to be brought into the party array. In so far as the legal heirs are concerned, unless and until it is established that the legal heirs have inherited property from the original owner, no case will lie against them and it can only be to the extent they have inherited such property. In view of the declaration of law already made by this Court (in the connected matters) exonerating the Insurance Company from the liability, this Court finds that no liability can be mulcted upon the shoulders of the appellant, for want of coverage under the policy. The Award passed by the Tribunal stands modified to the said extent. We make the position clear that, as the second respondent (Mr. K.C. Abraham) who was the owner of the vehicle was very much represented before this Court, when the judgment was rendered on 31.01.2006 in MACA No. 1729 of 2004, declaring the absence of coverage under the policy, it is open for the claimant to pursue the matter before the Tribunal by way of appropriate proceedings, to obtain the due amounts from the parties who are actually responsible for the same, except the appellant/insurer

MACA No. 930 of 2004

: 4 :

Without prejudice to the rights and liberties as above, the matter stands disposed of.

Sd/-

**P. R. RAMACHANDRA MENON,
JUDGE.**

Sd/-

**BABU MATHEW P. JOSEPH,
JUDGE.**

kmd