

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 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

MACA.No. 118 of 2005 ()

AGAINST THE AWARD IN OPMV 552/1996 of MACT,TSR DATED 02-03-2001

APPELLANT/APPELLANT:

K.U.SUJITHRAN, KOZHIMADAN HOUSE,
P.O.ANCHERY, THRISSUR DISTRICT.

RESPONDENT(S) :

1. M.A.BAIJU, S/O ALPHONSE
MUNDAKKAL HOUSE, P.O.INCHAKUNDU, THRISSUR DISTRICT.

2. OUSEPH K.P., S/O.KALLUKKARAN OUSEPH,
UPPUZHY DESOM, MUPLIYAM VILLAGE, THRISSUR DISTRICT.

3. BRANCH MANAGER,
NEW INDIAN ASSURANCE CO.LTD., KUNNAMKULAM, THRISSUR.

R,R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R,R3 BY ADV. SRI.KKM.SHERIF
R,R3 BY ADV. SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P JOSEPH, JJ.**

~~~~~

M.A.C.A. No. 118 of 2005

~~~~~

Dated, this the 27th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

Challenge is against the Award passed by the MACT, Thrissur in M.V.(OP) No. 552 of 96.

2. The vehicle bearing No. KL8 A 5666 belonging to the appellant got involved in a road traffic accident on 18.02.1995, causing serious injuries to the claimant. After evaluation of the facts and figures, the Tribunal passed an Award granting a total sum of Rs.1,77,100/- as compensation, which was ordered to be satisfied with interest @ 9% p.a. Observing that there was violation of statutory/policy condition in so far as the vehicle was driven by the driver without any valid licence, the insurer was directed to satisfy the said amount, with liberty to have it recovered from the other respondents concerned. This is sought to be challenged by the owner of the vehicle, mainly contending that the liberty given by the Tribunal in favour of the Insurance Company to have it recovered is

contrary to the mandate of law declared by the Apex Court as per the decision rendered in **National Insurance Co. Ltd. Vs. Swaran Singh [2004 (1) KLT 781 (SC)]**

3. The learned counsel appearing for the Insurance Company submits that the scope of **Swaran Singh's** case was subsequently considered and clarified by the Apex Court on many an occasion, including as per the decision reported in **(2008) 8 SCC 165 [Ram Babu Tiwari Vs. United India Insurance Co. Ltd.]**. Recently a larger Bench of this Court (consisting of 5 Judges) considered the same and explained what the term 'duly licensed' means, by virtue of the decision rendered in **Oriental Insurance Company Ltd., Chalakkudy Vs. Poullose and another [2015 (1) KLT 682]**. It has been held that, if the licence was not renewed within '30days' from the date of its expiry, subsequent renewal, if any, can only have the effect from the date of renewal and as such, it cannot be said that the driver was 'duly licensed' on the date of accident, if the accident had occurred in the interregnum. In the instant case, the accident occurred on 18.02.1995, whereas the licence of the driver had expired on 01.11.1994, which was renewed only on 06.03.1995. As such, the

driver was 'not duly licensed' on 18.02.1995 and this being the position, no interference is warranted, in view of the decision rendered by the larger Bench of this Court (cited supra).

4. The appeal is filed with a petition to condone the delay 1234 days, wherein notice was ordered on 01.02.2005. Subsequently, it was found that the learned lawyer who was representing the appellant was no more. In the said circumstance an order was passed on 06.06.2013, to the following effect :

"The advocate appearing for the appellant is no more. No other advocate has vakalath also. In the above circumstances, it is only appropriate that the appellant be appraised of this fact so that he can engage another advocate to prosecute the appeal. Accordingly, the Registry is directed to issue notice to the appellant intimating him that his advocate is no more and if he is so interested, he may engage another advocate and prosecute the appeal. Post after a month."

5. Based on the said order, notice was sent to the appellant by registered post. It is seen from the endorsement made by the Registry that the notice sent to the appellant has been returned, stating that it was 'unclaimed' by the appellant/owner of the vehicle. It appears that the appellant is no more interested in the

cause of action projected in the appeal.

6. In view of the fact that notice sent to the appellant has been returned 'unclaimed' and since the appellant has not chosen to appear either in person or otherwise so as to represent him, nothing further survives to be considered in the appeal.

Appeal stands dismissed accordingly.

sd/-
P. R. RAMACHANDRA MENON,
JUDGE.

Sd/-
BABU MATHEW P. JOSEPH,
JUDGE.

kmd