

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

MACA.No. 292 of 2006

AGAINST THE AWARD IN OPMV 203/1998 of MACT, TIRUR DATED 05-10-2005

APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LIMITED,
TIRUR NOW REPRESENTED BY ITS ADMINISTRATIVE, OFFICER
REGIONAL OFFICE, M.G.ROAD, KOCHI-11.

BY ADV. SRI.MATHEWS JACOB (SR.)

RESPONDENTS:

1. P.SIDHIQUE, S/O.SAIDALI,
PALAPPETTI, ANNARA, TIRUR
MALAPPURAM DISTRICT.
2. SHAJAHAN.E.P., S/O.KHADER E.P.,
ELLATHU PARAMBIL HOUSE, P.O.PARAVANNA.
3. M.P.FAIZAL, MADATHIL PARAMBIL HOUSE,
CHEMBARA P.O., MEENADATHUR.
(NO RELIEFS ARE CLAIMED AGAINST THE 4TH RESPONDENT
AND HENCE HE IS NOT MADE A PARTY IN THIS APPEAL).

R1 & 2 BY ADV. SRI.PROMY KAPRAKKATT
R1 BY ADV. SRI.K.N.ABHILASH
R1 BY ADV. SRI.SUNIL NAIR PALAKKAT
R1 BY ADV. SMT.P.K.BEENA
R3 BY ADV. SRI.E.NARAYANAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
16-07-2015, ALONG WITH CO. 8/2012, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

**P.R.RAMACHANDRA MENON &
ANU SIVARAMAN, JJ.**
= = = = =
**M.A.C.A. No.292 of 2006 &
Cross Objection No.8 of 2012**
= = = = =
Dated this the 16th day of July, 2015

JUDGMENT

Anu Sivaraman, J.

Appellant herein was the third respondent in O.P.(MV).No.203 of 1998 before the Motor Accidents Claims Tribunal, Tirur. The appellant was the insurer in respect of the goods auto rickshaw bearing registration No.KL-10B/6414. The first respondent herein was the claimant before the Tribunal. The second and third respondents are the driver and the owner respectively of the auto rickshaw which was involved in the accident. The claim petition was filed seeking compensation for personal injury suffered by the claimant in an accident which occurred on 23.07.1997. The contention of the first respondent herein in the claim petition was that the first respondent was travelling along with the driver of the goods auto rickshaw, who was the 1st respondent before the Tribunal and the 2nd respondent in this appeal, for purchasing construction materials for his house, when the driver lost control and the vehicle capsized and the claimant suffered injuries. It was alleged that the accident occurred due to the rash and negligent driving of the 2nd respondent herein. The 1st

respondent further contended that the 3rd respondent herein was the registered owner of the auto rickshaw at the time of the accident but the real owner was the person who was impleaded as the supplemental 4th respondent before the Tribunal who is not made a party in this appeal.

2. Before the Tribunal, the driver was set ex parte. The 2nd respondent owner entered appearance but did not file written statement. The 3rd respondent insurer admitted the policy but contended that since the 2nd respondent is said to have sold the auto to the 4th respondent, the insured has no insurable interest in the vehicle at the time of the accident. It was further contended that the driver was not duly licensed to drive the transport vehicle and further that the claimant who was a gratuitous passenger in a goods vehicle was not covered by the policy of insurance. The 4th respondent also entered appearance and filed written statement contending that the certificate of registration and policy of insurance stood in the name of the 2nd respondent at the time of the accident and the 3rd respondent is liable to indemnify the 2nd respondent and pay the compensation.

3. The Tribunal found that the accident occurred due to the negligence of the 1st respondent. The total compensation of Rs.80320/- was awarded to the claimant as compensation. On the issue as to the liability for satisfying the award the Tribunal found that

the claimant was only a gratuitous passenger in the auto rickshaw and that the 3rd respondent had no liability to pay compensation to him. However, the 3rd respondent was directed to satisfy the award and was given liberty to recover the same from the 2nd respondent who is the insurer. This appeal has been preferred by the insurance company aggrieved by the direction to pay and recover. It was their case that they had produced the policy of insurance before the Tribunal and after finding that the insurer was not liable to make any payment since the policy of insurance did not cover a gratuitous passenger in the goods vehicle, it was unjustified to direct them to satisfy the award and then seek recovery from the insurer.

4. We have heard Sri.Mathews Jacob, learned Senior counsel appearing for the appellant and the counsel appearing for the respondents. It is submitted by the counsel for the appellant that the policy in question had been produced before the Tribunal and the question of liability of the appellant to satisfy the award had been raised at the first instance itself. After having considered the conditions of the policy the Tribunal directed the appellant to satisfy the award and recover from the insured. It is contended that the case of a gratuitous passenger in goods vehicle is one involving complete lack of liability on the part of the insurer and is not a case of violation of policy conditions alone. Going by the policy, the insurer is not liable

to indemnify the insured in respect of any injury sustained by such a passenger. A goods auto rickshaw is a vehicle having a seating capacity of one alone and no additional passenger can be carried in the same. In the above view of the matter, this court is of the opinion that the fastening of the liability on the insurer even temporarily to satisfy the award and then to seek recovery of the same is completely unjustified. The appeal is therefore allowed. Any amounts deposited by the insurer before the Tribunal in this case including statutory deposit for filing the appeal shall be refunded to it. No costs.

Cross Objection No.8 of 2012

This Cross Objection is filed by the 3rd respondent in O.P.(MV) 203 of 1998. He is the registered owner of the goods auto rickshaw bearing registration No.KL-10B/6414. It had been contended before the Tribunal that though he remained the registered owner and the insured in respect of the vehicle, the vehicle had actually been transferred to the 4th respondent before the Tribunal. The Cross Objection was filed on the contention that recovery, if any, by the insurer has to be made from the 4th respondent in the cross objection, who was the real owner of the vehicle at the time of the accident. When the cross objection came up for admission on 18.11.2013, a Bench of this Court had issued the following interim order:

*"Appeal was heard at length. After hearing, we are satisfied that in view of the Supreme Court decision in **Jose v. Chacko (2001(3) KLT 633/SC)**, even if the third respondent has transferred the vehicle, the third respondent is liable since the third respondent continues to be the registered owner. When this is pointed out, the learned counsel for the third respondent submits that he has filed a cross-objection in the matter and he should be given liberty to recover the amount payable by him from the 4th respondent. For that, we have to hear the 4th respondent also, on the cross-objection.*

In the above circumstances, we are inclined to issue notice to the 4th respondent in the cross objection, but subject to the condition that the cross objector will deposit the amount awarded by the Tribunal as per the impugned award before the Tribunal. The Cross-objector is given two months time from today to deposit the amount on that condition the Cross Objection is admitted. The Cross-Objector shall take out notice to the 4th respondent in the Cross-Objection, can be withdrawn by the claimants".

It is seen that the cross objection was conditionally admitted and though notice taken to the 4th respondent therein was not served, Sri.Mohammed Iqbal seen to have entered appearance for the 4th respondent. The order of admission itself being a conditional one, the cross objection is disposed of making the interim order absolute. If the condition stipulated in the interim order has not been complied with, the cross objection would automatically stand dismissed with effect from the date of expiry of the time granted by that order.

P.R.Ramachandra Menon,Judge

Anu Sivaraman, Judge

