IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

MACA.No.145 of 2012 ()

AGAINST THE AWARD IN OPMV 2106/2001 of SPL.COURT FOR EC ACT CASES &MACT,TSR DATED 09-01-2007

APPELLANT(S)/APPELLANT/1ST RESPONDENT :

A.V.PAUL, S/O.VARGHESE,
ALAPPATT HOUSE, PALACE ROAD
KUNNAMKULAM.

* Addl. 2. ELSY, W/O LATE. A. V. PAUL
ALAPPATT HOUSE, PALACE ROAD, KUNNAMKULAM
ORDER DATED. 25/07/2012 IN I.A. 1774/2012 IN M.A.C.A. 145/2012

Addl. 3. SUMY, D/O A. V. PAUL
ALAPPATT HOUSE, PALACE ROAD, KUNNAMKULAM
ORDER DATED. 25/07/2012 IN I.A. 1774/2012 IN M.A.C.A. 145/2012
BY ADV. SRI.SUBHASH CYRIAC

*(impleaded as additional appellants 2 and 3 in the appeal vide order dated 25.07.2012 in I.A.No.1774/12 in M.A.C.A.No.145/12)

RESPONDENTS/PETITIONER AND 2ND RESPONDENT :
----

1. JOLLY MADASSERY
   S/O.M.M.PAULOSE, MADASSERY HOUSE, LOURDHUPURAM
   CHEMBUKAVU VILLAGE. THRISSUR 680 001

2. THE ORIENTAL INSURANCE COMPANY LIMITED
   BRANCH OFFICE, KUNNAKULAM, THRISSUR.

R2,3 BY ADV. SRI.A.R.GEORGE
R1 BY ADV. SRI.T.C.SURESH MENON
R1 BY ADV. SRI.P.S.APPU
R1 BY ADV. SRI.A.R.NIMOD
R1 BY ADV. SRI.K.A.ANAS
BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.
= = = = = = = = = = = = = = =
M.A.C.A.No.145 of 2012
= = = = = = = = = = = = = = = =
Dated this the 20th day of May, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the first respondent in O.P.(MV) No.2106 of 2001 on the file of the Motor Accidents Claim Tribunal, Thrissur. The first respondent is the claimant and the second respondent is the second respondent therein. The first respondent herein filed O.P(MV) No.2106 of 2001 under section 166 of the Motor Vehicles Act, 1988, claiming a total sum of ₹4,79,600/- as compensation for the injuries sustained by him in a motor accident involving a tempo van bearing Registration No.KL 8/ M 2992 owned by the appellant and insured by the second respondent.

2. The first respondent-claimant contended that accident happened as a result of the rash and negligent driving by Sadanandan, the driver of the tempo van who succumbed to the injuries sustained by him in the accident and died on the spot. Though notice was served, the appellant did not enter appearance before the Tribunal or file a written statement, with the result, he was set ex parte. The second respondent insurer entered appearance and filed a written statement admitting

insurance coverage of the vehicle. They also contended that the claimant was an unauthorised passenger in a goods vehicle and therefore, the insurer is not liable to indemnify the insured. The Motor Accident Claims Tribunal, after considering the rival contentions, allowed the claim petition in part and awarded the sum of ₹2,43,000/- as compensation to the first respondent. The Tribunal also held, accepting the contentions of the insurer, that as the claimant was a non-fare paying passenger, it is not liable to indemnify the insured. The Tribunal accordingly directed the first respondent, (the appellant herein, who is admittedly the owner of the motor vehicle) to pay the amount awarded as compensation together with interest and costs. The appellant has, aggrieved thereby, filed this appeal.

3. We heard Sri.Subhash Syriac, learned counsel appearing for the appellant, Sri.T.C.Suresh Menon, learned counsel appearing for the first respondent and Sri.George Cherian, learned Senior Advocate appearing for the second respondent. Sri.Subhash Syriac, learned counsel appearing for the appellant contended relying on Ext.A1 FIR and and Ext.B1 Certificate of Insurance that the claimant was travelling in the motor vehicle as the employee of the owner of the goods carried therein and therefore, the Motor Accident Claims Tribunal erred in holding that the insurer is not liable to indemnify the

insured. Per contra, Sri.George Cherian, learned Senior Advocate appearing for the insurer contended that no reliance can be placed on the statement given by the claimaint to the police at the time of registration of Ext.A1 FIR, in view of Ext.A6 salary certificate and Ext.A7 leave certificate. The learned counsel for the insurer contended that Exts.A6 and A7 conclusively establish the fact that the claimant was engaged as a salesman in ABT Industries Ltd. and therefore, the statement in Ext.A1 FIR that he was travelling in the goods vehicle as the employee of the owner of the milk carried therein cannot be believed. Inviting our attention to Exts.A6 and A7 and also column 5 of the claim petition, the learned counsel for the insurer submitted that the claimant's case was that he was an employee of ABT Industries and therefore for that reason also, no reliance can be placed on the statement in Ext.A1 FIR that the claimant was travelling in the goods vehicle as the employee of the owner of the milk carried therein or as the owner of the milk carried in the vehicle.

4. We have considered the submissions made at the Bar by the learned counsel on either side. We have also gone through the pleadings and the materials on record. The averment in the claim petition is that the claimant is an employee of ABT Industries, Thrissur. Exts.A6 and A7 certificates, disclose that the claimant was an

employee of ABT Industries which has its registered office at Coimbatore. The statement given by the claimant before the police, reflected in Ext.A1 FIR is to the effect that he was a contractor of Sakthi Milk Company and that he was accompanying the milk carried in the vehicle. Such a case cannot, in our opinion, be countenanced in view of Exts.A6 and A7 certificates. Apart from the ipse dixit of the claimant there is no material to hold that the claimant was travelling in the goods vehicle as the owner of the goods or as the agent or employee of the owner of the goods carried in the vehicle. It is, only if the claimant was travelling in the goods vehicle as the owner of the goods or as the agent or employee of the owner of the goods carried therein, will the insured be entitled to be indemnified by the insurer.

We therefore find no good grounds to interefere with the impugned award. The appeal fails and it is accordingly dismissed. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj