

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

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

MACA.No. 1386 of 2005 ()

AGAINST THE AWARD IN OPMV 2816/1997 of M.A.C.T.,ERNAKULAM DATED 25-06-2004

APPELLANT(S)/APPELLANT/1ST RESPONDENT:

MUHAMMED HAJI V.K.,
VELUTHAPATTAYIL HOUSE, PUTHUPARIYARAM DESOM
PALAKKAD-2.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENT(S) :

1. IBRAHIM, S/O.UMMER, NOW RESIDING AT
AZHIKKODE HOUSE, ERIYADU VILLAGE, ARAPPURAM COLONY
KOCHI.

2. THE ORIENTAL INSURANCE COMPANY LTD.,
KOCHI-2.

R,R2 BY ADV. SRI.MATHEWS JACOB (SR.)

R,R2 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
29-07-2015, 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. 1386 of 2005  
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Dated, this the 29th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

This appeal is preferred at the instance of the first respondent before the Tribunal, who is stated as the owner- cum - driver of the vehicle (mini lorry) bearing No. **KL7/H 2885** which was involved in the road traffic accident.

2. The incident happened on 21.11.96. at about 9.15 am, when the complainant was pulling a handcraft along the Mattancherry – Panayappilly road. While so, mini lorry bearing No. **KL7/H 2885**, which came from behind hit against the claimant and caused some serious injuries. This led to the claim petition preferred before the Tribunal. The first respondent was the owner-cum-driver and the second respondent was the insurer of the vehicle. Despite completion of service of notice and in spite of appearance before the Tribunal, the appellant herein did not file any written statement, nor did adduce any evidence with regard to the contentions raised in the claim petition. The second respondent insurer filed a written statement admitting the policy, but disputed the liability for violation

of the statutory/policy conditions, in so far as there was no valid driving licence.

3. The factual position disclosed from the proceedings is that, the appellant, who was stated as driving the vehicle at the relevant time, also being the owner of the vehicle, was charged in respect of the offences under section 279, 337 of IPC and Section 134(a) of the Motor Vehicles Act, besides charging under section 3 (1) of the M. V. Act for the absence of driving licence. On completion of the trial, a finding was arrived at, that the accident was occurred only because of the rash and negligent driving of the mini lorry by the appellant. The total liability was fixed as Rs.36,250/- and the same was directed to be satisfied by the insurance company, with liberty to have it recovered from the owner-cum-driver, in view of violation of the statutory/policy conditions. This is sought to be intercepted by filing the appeal stating that there are some discrepancies with regard to the number of the vehicle shown; that he was not driving vehicle at the relevant time etc.

4. During the course of hearing, the learned counsel for the appellant made submissions with regard to the discrepancies as to the injuries caused, actual part of the vehicle which hit against the

injured and such other aspects. This Court is not at all impressed with the said submission. There was absolutely no case for the appellant before the Tribunal as to any disputed question of facts. In spite of entering appearance before the Tribunal, no written statement was ever filed, as observed by the Tribunal in paragraph 3 . The appellant did not choose to mount the box even otherwise. Whatever may be the volume of evidence, if adduced, it could not have been accepted for want of specific pleadings. For the said reasons, this Court finds that the case projected before this Court is not liable to be entertained.

Interference is declined and the appeal stands dismissed.

sd/-

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

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd