

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

MACA.No. 1159 of 2012

AGAINST THE AWARD IN I.A.NO.10736/10 IN OPMV 2343/2010 of
MACT,THRISSUR, DATED 04-10-2011

APPELLANT(S)/5TH RESPONDENT:

THE NEW INDIA ASSURANCE CO.LTD.,
REGIONAL OFFICE, KANDAMKULATHY TOWERS, M.G.ROAD,
ERNAKULAM,
REPRESENTED BY ITS DULY AUTHORISED OFFICER.

BY ADV. SRI.VPK.PANICKER

RESPONDENT(S)/RESPONDENTS 1 TO 4:

1. SUNITHA,
W/O.LATE GIRISAN @ GIRISHKUMAR,
THRIPLEKULATHU HOUSE,
SAJITHA NIVAS, PAINOOR,
PERINGOTTUKARA POST, THRISSUR TALUK-680 565.

2. KRISHNA DAS (MINOR),
S/O.LATE GIRISAN @ GIRISHKUMAR,
THRIPLEKULATHU HOUSE,
SAJITHA NIVAS, PAINOOR,
PERINGOTTUKARA POST, THRISSUR TALUK-680 565.

3. GOPIKA,
D/O.LATE GIRISAN @ GIRISHKUMAR,
THRIPLEKULATHU HOUSE,
SAJITHA NIVAS, PAINOOR,
PERINGOTTUKARA POST
THRISSUR TALUK-680 565
(MINOR RESPONDENTS 2 & 3 ARE
REP. BY MOTHER & GUARDIAN
SUNITHA, THRIPLEKULATHU HOUSE,
SAJITHA NIVAS, PAINOOR,
PERINGOTTUKARA POST, THRISSUR TALUK-680 565.)

4. MUKUNDAN,
S/O.CHANDRASEKHARAN, PALLATH HOUSE, PAINOOR,
PERINGOTTUKARA POST, THRISSUR TALUK-680565.

5. ATHIRA @ ATHIRA P.MUKUNDAN,
D/O.JYOTHI @ INDIRA (LATE), PAINOOR
PERINGOTTUKARA POST, THRISSUR TALUK-680 565.

6. AKHIL (MINOR) ,
S/O..JYOTHI @ INDIRA (LATE) PAINOOR,
PERINGOTTUKARA POST, THRISSUR TALUK,
REP. BY SISTER AND GUARDIAN 1ST PETITIONER
ATHIRA P.MUKUNDAN IN THE OPMV,
-DO- -DO-

7. SARASWATHY AMMA,
D/O.JANAKI AMMA AND MOTHER OF JYOTHI
@ INDIRA (LATE) ,
PAINOOR, PERINGOTTUKARA POST, THRISSUR TALUK.

R1-R4 BY ADV. SRI.SANIL JOSE
R5-R6 BY ADV. SRI T C SURESH MENON
R5-R6 BY ADV. SRI PS APPU
R5-R6 BY ADV. SRI NIMOD A R

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 06-10-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

M.A.C.A. No. 1159 of 2012

Dated this the 6th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

The insurer of the vehicle bearing Registration No.KL-02/D-6021, who happens to be the 5th respondent before the Motor Accidents Claims Tribunal, Thrissur, in O.P.(MV) No.2343/2010, is the appellant before this Court. The grievance is with regard to the interim award passed by the Tribunal under Sec.140 of the Motor Vehicles Act directing the Insurance Company to satisfy a sum of ₹50,000/- in respect of the death of a person due to the accident occurred on 16/7/2010 on being knocked down by the tempo trax bearing Registration No.KL-02-D-6021.

2. The claim was preferred by the legal heirs of the deceased which was sought to be resisted by the

Insurance Company pointing out that the deceased was a 'passenger in a private car' and that the policy issued in respect of the vehicle did not provide for any coverage to such passenger. It was also stated that the same was an 'Act only' policy and as such, no liability could have been mulcted upon the shoulders of the Insurance Company. The said contention was noted by the Tribunal while considering the relief sought for in I.A.No.10736/2010 preferred in the said O.P. claiming for the benefit of Sec.140 of the M.V. Act. However, the Tribunal observed in paragraph-7 that this aspect will be considered after conducting full trial of the case and for the time being, the Tribunal awarded an interim relief of ₹50,000/- which was directed to be satisfied by the 5th respondent.

3. Heard the learned counsel for the appellant as well as the learned counsel appearing for the claimants.

4. The learned counsel for the claimants, who are the respondents 5 to 7 herein, submits that the

version of the Insurance Company that the policy is an 'Act only' policy is not correct and a copy of the policy schedule is placed for consideration of this Court. The learned counsel submits that additional personal accident premium was collected and that the quantum of TP premium shown in the schedule as '₹2925/-' is inclusive of such cover as well. The position is sought to be asserted with reference to the clause under GR.36 of the India Motor Tariff; wherein it has been stipulated under the head "Compulsory Personal Accident Cover for Owner-Driver", that such coverage will be applicable under both 'Liability Only policies' and 'Package policies' whereby the owner of the insured vehicle holding an 'effective' driving licence is termed as 'Owner-Driver' for the purposes of the said provision and that the premium will cover the risk of such person as well. The learned counsel for the Insurance Company submits on the other hand that the idea understanding of the claimant with regard to the scope of the 'compulsory personal accident cover'

for owner-driver is thoroughly wrong and misconceived. The learned counsel submits that the so-called automatic cover to the owner-cum-driver, even otherwise, will be applicable only in so far as the victim happened to be the owner-cum-driver i.e., when the vehicle is being driven by the owner himself and not otherwise. In any view of the matter, it does not take in the risk in respect of person who is travelling in the vehicle and who is not an owner-cum-driver as in the instant case.

5. After hearing both sides, this Court finds that the scope of the policy and coverage have to be established before the Tribunal, where the matter is pending. The present challenge is with regard to the interim award passed by the Tribunal and once evidence is adduced in support of rival contentions, the picture will be become more clear and appropriate order could be passed by the Tribunal accordingly. In the said circumstance, we relegate the matter to be pursued before the Tribunal, with liberty to both the

sides to adduce evidence and substantiate their version. The Tribunal is directed to finalise the matter at the earliest, at any rate, within a period of 'four months' from the date of receipt of a copy of this judgment. Implementation of the interim award dated 4/10/2011 shall be subject to the final outcome of the O.P.(MV) No.2343/2010.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge