

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

MACA.No. 1794 of 2012 ()

AGAINST THE AWARD IN OPMV 1007/2008 of MACT PALA DATED 08-03-2012

APPELLANT(S)/2ND RESPONDENT:

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

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENT(S)/PETITIONERS :

1. LISSY
W/O.LATE JOSEPH, MATHIRAPPALLY HOUSE, PAMBANAR.P.O
PEERUMEDU VILLAGE, PIN-686315.

2. JIBIN,
S/O.LATE JOSEPH, MATHIRAPPALLY HOUSE, PAMBANAR.P.O
PEERUMEDU VILLGE, PIN-686315.

3. LITTY,
D/O.LATE JOSEPH (MINOR), MATHIRAPPALLY HOUSE
PAMBANAR.P.O, PEERUMEDU VILLAGE, PIN-686315.

4. LITTU,
D/O.LATE JOSEPH (MINOR), MATHIRAPPALLY HOUSE
PAMBANAR.P.O, PEERUMEDU TALUK, PIN-686315.

5. RAJI MATHEW,
PEMBLANIYIL HOUSE, BHARANANGANAM.P.O, KOTTAYAMDISTRICT
PIN-686576. (MINOR RESPONDENTS 3 & 4 ARE REPRESENTED BY
THEIR MOTHER 1ST RESPONDENT)

R1 BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
29-10-2015, ALONG WITH MACA. 1901/2012, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

[CR.]

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.A.C.A. No. 1794 and 1901 of 2012

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Dated, this the 29th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

These matters were actually heard and the judgment was dictated in the Open Court on 15.10.2015. But subsequently it was noted that there was some mistake in the calculation and hence the items were listed again before the Court and heard both the sides accordingly. These appeals arise from the verdict passed by Motor Accidents Claims Tribunal, Pala in O.P.(MV) No. 1007 of 2008 on 08.03.2002. MACA No. 1794 of 2012 has been preferred at the instance of the Insurance Company, whereas the other appeal has been preferred at the instance of the claimants.

2. The challenge raised by the Insurance Company is that there was absolutely no liability for the Insurance Company, as the accident involved in these appeals was a self invited one; in the course of driving of the lorry by the deceased himself, which does not come within the purview of policy coverage. The grievance in the other appeal preferred by the claimants is with reference to the inadequacy of the compensation awarded under different heads.

3. Coming to the minimum extent of facts required for effective adjudication of these cases, the accident was occurred on 04.06.2008 when the lorry bearing No. **KL 05 Q 1566**, which was owned by the first respondent in MACA No. 1901 of 2012 [5th respondent in the other case] and driven by the deceased, capsized leading to fatal injuries resulting in death of the driver of the lorry. This was sought to be compensated by filing claim petition by the appellants in MACA No. 1901 of 2012. The claimants put up a case before the Tribunal that the deceased was having a monthly income of

Rs.3300/- by virtue his engagement as the driver and the claim was sought to be satisfied attributing liability upon the insurance company.

4. Admittedly, the claim was preferred under Section 163 A of the M.V. Act. It was sought to be resisted by the Insurance Company, pointing out that since the vehicle was actually being driven by the deceased himself, he alone was responsible for the accident and that no liability could be mulcted upon the shoulders of the Insurance Company. The said contention was however brushed aside by the Tribunal and a total compensation of **Rs.3,15,735/-** was awarded under various heads, which was ordered to be satisfied with interest @ 7.5% p.a. This made the parties on both the sides to approach this Court by way of appeals as aforesaid.

5. Heard Sri. Mathew Jacob, the learned senior counsel appearing for the Insurance Company [appellant in MACA No. 1794 of 2012] and Sri. Abraham Mathew, the learned counsel appearing for the claimants [the appellants in MACA No. 1901

*M.A.C.A. Nos. 1794 and
1901 of 2012*

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of 2012].

6. As mentioned above, the claim petition was preferred under Section 163 A of the M.V. Act. The amounts awarded by the Tribunal under different heads as discernible from the table given in the Award are in the following terms :

Schedule

Part I	Rs.
Medical expense	10,835/-
Funeral expense	1,500/-
Part II	
Loss of dependency	2,90,400/-
Pain and suffering	5,000/-
Loss of consortium	3,000/-
Loss of estate	5,000/-
Total	3,15,735/-

7. The learned senior counsel appearing for the Insurance Company submits that there is no dispute with regard to the factual particulars in relation to occurrence of accident or as to the fatal injuries sustained by the deceased, which was in the course of driving the lorry by himself.

Contention is that, it being a self accident, the policy does not intend to cover any such risk, by virtue of the Scheme of the Statute.

8. The law in this regard has been made clear by the Apex Court as per the decision reported in **2011 (4) KLT 821 [National Insurance Co. Ltd. Vs. Sinitha]** which stands in favour of the insurer. The position has reiterated by a Full Bench of this Court as well (placing reliance on the decision cited supra) as per the verdict rendered in **Oriental Insurance Co. Ltd. Vs. Joseph [2012 (2) KLT 132 (FB)]** (to which I was also a member). It is true that the decision rendered by the Apex Court in **Sinitha's case** [cited supra] was subsequently doubted by a co-ordinate Bench and referred the matter to a larger Bench as per the decision reported in **2013 (4) KLT 488 [United India Insurance Co. Ltd. Vs. Sunil Kumar]**. It is also settled law, that merely for the reason that the decision rendered by the earlier Bench came to be doubted by the subsequent co-ordinate Bench,

passing an order of reference to larger Bench, by itself will never amount to stay of the earlier verdict, nor does it mean that the earlier judgment will be inoperative. The law declared by the Supreme Court is law of the land by virtue of Article 141 of the Constitution of India. Unless and until it is varied, the earlier decision remains intact and the reference made by the subsequent Co-ordinate Bench cannot have any adverse consequence in so far as the declaration of the law is concerned. As such, if the accident involved is a self made one, there cannot be any liability for the insurance company to pay the compensation.

9. However, it has to be noted that the accident was occurred when the goods carriage was admittedly being driven by the deceased. The question is whether any statutory liability is cast upon the insurer of the vehicle under the M.V. Act in respect of the claim of a 'driver' engaged for driving the goods carriage. The answer cannot but in the positive, by virtue of the mandate of Section 147 of the M.V. Act which

reads as follows :

"147. Requirements of policies and limits of liability : (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

By virtue of the legal position as above, it is very much clear that the person engaged in driving the goods carriage comes within the purview of the statutory policy issued under Section

147 of the M.V. Act. In the case of 'passenger carrying vehicle', it extends further to 'conductor' and 'checking inspector' as well; as stipulated in the proviso (i) (b) of the very same provision. In other words, liability to be satisfied in the case of a person engaged in driving the goods carriage, as in the instant case, is to the extent as payable under the Workmen's Compensation Act. This being the position, the point to be considered is, whether the quantum of compensation awarded by the Tribunal is in any way excess to the extent as payable under the Workmen's Compensation Act.

10. The learned counsel appearing for the Insurance Company submits that, by virtue of the Bar under Section 167 of the Motor Vehicles Act, the party cannot seek the benefit under both the streams simultaneously, more so when they have already approached the Tribunal and claimed compensation under the relevant provisions of the Motor Vehicles Act. The claimants have not availed remedy under

both the Statutes simultaneously in respect of the same cause of action and as such, the bar under S.167 of the M.V. Act is not attracted to the case in hand. Endeavour of this Court is only to have a scrutiny to see whether the eligible extent of compensation (with respect to the provisions of the Workmen's Compensation Act, in terms of S.147 (1) (b) - I proviso) has been awarded, or if there is any excess, should it scaled down in the appeal preferred by the Insurer.

11. The monthly salary of the deceased, claimed as Rs.3300/-, has been reckoned by the Tribunal to award the compensation. The multiplier adopted is '11' and after deducting $1/3^{\text{rd}}$ towards the personal expenses, the compensation worked out under the head of loss dependency is Rs.2,90,400/-. The deceased was aged above 60 years at the time of the accident. If the compensation payable is re-worked, reckoning the undisputed extent of monthly income as Rs.3300/- and the relevant factor (117.41) under the Workmen's Compensation Act in respect of a person aged 60

years, it will come to **Rs. 193726.5**. The said amount would have attracted interest @ 12% p.a., being the statutory rate under the Workmen's Compensation Act.

13. In the above circumstances, the Insurance Company is liable to satisfy a sum of **Rs.1,93,727/-** with interest at the rate of 12% as provided under the Workmen's Compensation Act in respect of the death of the person concerned, from the date of the accident, till satisfaction. We direct the Insurance Company to deposit the said extent of liability within one month.

Both the appeals stand disposed of accordingly.

sd/-

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

sd/-

**K. HARILAL,
JUDGE**

kmd