

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

MACA.No. 13 of 2015 ()

AGAINST THE AWARD IN OPMV 2058/2005 of M.A.C.T., NEYYATTINKARA

APPELLANT/APPLICANT:

SURENDRAN AGED 48 YEARS
S/O.BHASKARAN, RESIDING AT CHAMPIRAKOORA VEEDU
PALLICHAVEETTUMURI, PALLIPPURAM VILLAGE
ATTINGAL TALUK, THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.R.NIKHIL
SRI.BINU PAUL (NETTOOR)

RESPONDENTS/RESPONDENTS:

1. T.SAILAN
S/O.THANKAYYAN, RESIDING AT ELLAMPLAVILA VEEDU
VADAKARA, MARAYAMUTTOM, MARAYAMUTTOM P.O.
THIRUVANANTHAPURAM DISTRICT - 695 124.

2. SHIBU
S/O.MANIYAN
RESIDING AT PACHIRA KARICHALLORVILAVEEDU
PALLIPURAM VILLAGE
THIRUVANANTHAPURAM DISTRICT - 695 316.

3. THE MANAGER
UNITED INDIA INSURANCE COMPANY LTD.
HOSPITAL JUNCTION, NEYYATTINKARA
THIRUVANANTHAPURAM - 695 121.

4. K.SASI
S/O.KUTTAN, RESIDING AT CHEKKADIVILA PUTHEN VEEDU
RAMESWARAM, AMARAVILA P.O., NEYYATTINKARA TALUK
THIRUVANANTHAPURAM - 695 122.

R3 BY ADV. SRI.P.V.JYOTHI PRASAD
R4 BY ADV. SRI.D.KISHORE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 11-03-2015, ALONG WITH MACA. 15/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

M.A.C.A.Nos.13 & 15 OF 2015

Dated this the 11th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

When these matters came up for consideration, we heard the learned counsel on both sides.

2. The appeals have been respectively filed from the common award in O.P.(MV)Nos.2041/2005 & 2058/2005 of the Motor Accident Claims Tribunal, Neyyattinkara.

3. The case of the appellants is that they were travelling in an autorickshaw on the date on which the accident occurred namely on 12.6.2005. Claiming compensation consequent on the injuries sustained and the treatment undertaken, they filed the applications before the Tribunal. The Tribunal after hearing both sides dismissed the claim petition for the reason that the transferee of the vehicle from the fourth respondent before the Tribunal (the fourth respondent in this appeal also) namely Vijayan, has not been impleaded and therefore the

petition suffered from the defect of non-joinder of necessary parties.

4. We find from paragraph 9 of the award that the Tribunal was of the view that originally the RC owner, driver and insurer were impleaded. Later the fourth respondent was also impleaded who contended that as on the date of the accident, he was not the owner of the vehicle and he had transferred the ownership in favour of one Vijayan, S/o Govindan, Makayiram Veedu, Venganoor. He was examined also as RW1. He produced necessary documents also. The Tribunal found fault with the appellants in not impleading the said subsequent transferee in spite of the filing of the written statement by the fourth respondent, showing all details.

5. The learned counsel for the appellants submitted that since appellants sustained severe injuries, their right to get compensation from the owner concerned and the insurer may be allowed to be agitated afresh after impleading the said person.

6. The learned counsel for the Insurance Company submits that there was no permit at the time of the accident. We are not going

into the said contention at this stage.

In that view of the matter, it is only proper that the appellants are granted an opportunity to implead the necessary party. Therefore we set aside the common award and the appeals are allowed and we remand the matters for fresh consideration by the Tribunal. The parties will appear before the Tribunal on 10.04.2015 and the appellants shall file the application for impleading the necessary party immediately after appearance of the parties. Since we have set aside the award, the direction in the impugned award to realise the court fee in both cases is also vacated. There will be no order as to costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.VASHA, JUDGE

SV.