

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

MACA.No. 116 of 2015 ()  
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AGAINST THE AWARD DATED 30-08-2014 IN OPMV 92/2009 of ADDL. MOTOR  
ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/PETITIONER :  
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SANIA DERRY (MINOR), AGED 14 YEARS,  
REPRESENTED BY HER MOTHER AND NEXT FRIEND SHYNI DERRY,  
AGED 45 YEARS, VADAKKAN HUSE, AYYAPPANKAVU,  
ERNAKULAM DISTRICT.

BY ADV. SRI.ALEX THANNIPPILLY

RESPONDENTS/RESPONDENTS :  
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1. JUSTIN GEORGE,  
MULLASSERY HOUSE, AZAR ROAD, ELAMKULAM,  
KALOOR, ERNAKULAM DISTRICT-682 017.
2. ANTONY  
HOUSE NO.32/2766, PALATHURUTHIL HOUSE, THAMMANAM P.O.,  
ERNAKULAM DISTRICT-682 032.
3. NEW INDIA INSURANCE CO. LTD.,  
M.G.ROAD, ERNAKULAM, PIN-682 011.
4. DERRY JOHN  
VADAKKAN HUSE, AYYAPPANKAVU,  
ERNAKULAM DISTRICT-682 018.
5. SAMEER H.NEVGI  
SNEHA 43/18, AYYAPPANKAVU, ERNAKULAM DISTRICT-682 018.
6. UNITED INDIA INSURANCE CO. LTD.  
M.G.ROAD, ERNAKULAM DISTRICT-682 011.

R6 BY ADV. SRI.P.SANKARANKUTTY NAIR  
R BY SRI.JOHN JOSEPH VETTIKAD  
R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 09-06-2015, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**P.N.RAVINDRAN &  
ANU SIVARAMAN, JJ.**  
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**M.A.C.A.No. 116 of 2015**  
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**Dated this the 9<sup>th</sup> day of June, 2015**

**JUDGMENT**

**Ravindran, J.**

The appellant is the claimant in O.P.(MV).No.92 of 2009 on the file of the Additional Motor Accidents Claims Tribunal, Ernakulam. The respondents are the respondents therein. The appellant, a minor girl now aged 14 years instituted O.P.(MV).No.92 of 2009 contending that on account of the rash and negligent driving of a motor bike bearing registration No.KL-7 AL/6471 by the first respondent, it collided with the motor bike bearing registration No.KL-AX/9674 driven by her father on which she was riding pillion and as a result thereof, she fell on the road and sustained serious injuries. The first respondent is the driver, the second respondent is the owner and the third respondent is the insurer of the said motor bike. The claimant was admittedly a pillion rider on the motor bike bearing registration No.KL-7 AX/9674 driven by her father the fourth respondent, owned by the fifth respondent and insured by the sixth respondent. Her elder sister Taniya Derry, who was then a minor girl aged 11 years was also riding on the same motor bike and in that accident she also sustained

injuries. The appellant's sister had filed O.P.(MV).No.93 of 2009 before the Motor Accidents Claims Tribunal, Ernakulam claiming compensation for the injuries sustained by her.

2. The first respondent herein entered appearance and filed a written statement denying the allegation that he was driving the motor bike in a rash and negligent manner. He contended that the accident took place due to the carelessness on the part of the fourth respondent. The second respondent, the owner of the motor bike bearing registration KL-7 AL/6471 did not enter appearance and he was set ex-parte in both the cases. The third respondent, the insurer of the motor bike bearing registration No. KL-7 AL/6471 filed a written statement admitting the existence of a valid policy of insurance. It was contended that the first respondent who was driving the motor bike bearing registration No.KL-7 AL/6471 did not possess a valid driving license. The appellant's father the fourth respondent and the owner of the motor bike which he was riding namely the fifth respondent did not enter appearance. The sixth respondent, the insurer of the motor bike which the appellant's father was riding entered appearance and filed a written statement admitting the fact that the motor bike bearing registration No.KL-7 AX/9674 was covered by a valid policy of insurance issued by it. It however contended that it has no liability to

compensate the claimant for the reason that the accident took place on account of the negligence of the first respondent who was riding the motor bike bearing registration No.KL-7 AL/6471. The sixth respondent also contended that as two pillion riders were travelling in the motor bike, there is a breach of the policy conditions and therefore for that reason also, it is not liable to pay any amount as compensation.

3. Before the Motor Accidents Claims Tribunal no oral evidence was adduced on both sides. However, the claimant in O.P.(MV).No.92 of 2009 produced and marked Exts.A1 to A8 and the claimants in O.P. (MV).No.93 of 2009 produced and marked Exts.A9 to A12. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the rash and negligent driving of the motor bike bearing registration No.KL 7 AL/6471\_by the first respondent. The Motor Accidents Claims Tribunal thereafter proceeded to consider the claim for award of compensation under various heads and awarded the sum of Rs.27,942/- as compensation to the appellant claimant. By the very same award, the sum of Rs.10,195/- was awarded as compensation to the appellant's elder sister who was the claimant in O.P.(MV).No.93 of 2009. Though the Tribunal directed the third respondent insurer to deposit the amount awarded as compensation with interest and costs, on the ground that

the first respondent, who was driving the motor bike bearing registration No.KL 7 AL/6471 did not possess a driving licence, the Motor Accidents Claims Tribunal permitted the third respondent herein, the insurer of the said motor bike to recover the compensation paid by it under the award from respondents 1 and 2.

4. The appellant did not challenge the award passed by the Motor Accidents Claims Tribunal on 30.06.2011. The first respondent however filed M.A.C.A.Nos.1008 of 2012 and 2257 of 2012 challenging the award passed in O.P.(MV).Nos. 92 and 93 of 2009 respectively. The appeals were filed with petitions to condone the delay. Notice was ordered therein to the appellants herein and the other respondents in the application to condone the delay in filing M.A.C.A.Nos.1008 of 2012 and 2257 of 2012. The delay in filing the appeals was condoned, the appeals were admitted and notice again ordered to the appellant herein and the other respondents. After all the parties except the second respondent in M.A.C.A.No.1008 of 2012 and the fifth respondent in M.A.C.A.No.2257 of 2012 (namely the fifth respondent in O.P.(MV).No.93 of 2009) were served, a learned single Judge of this court allowed M.A.C.A.Nos.1008 of 2012 and 2257 of 2012 by judgment delivered on 21.06.2013 and remanded the claim petitions to the Motor Accidents Claims Tribunal, Ernakulam for the limited

purpose of considering the question whether the first respondent in the claim petitions possessed a valid learner's license on the relevant date and there was compliance/violation of the statutory requirements while riding the motor cycle. Notice to the second respondent in M.A.C.A.No.1008 of 2012 who is the second respondent in O.P.(MV). No.93 of 2009 was dispensed with for the reason that he was set ex pate before the Tribunal. Notice to the fifth respondent in O.P.(MV). No.93 of 2009 was dispensed with for the reason that he has not been held liable under the award. In the judgment delivered on 21.06.2013 after notice to and hearing to the appellant and also her elder sister who was the claimant in the connected case, the learned single Judge held that the quantum of compensation awarded to the claimants is not under challenge and that the only question that arises for consideration is whether the finding entered by the Tribunal that the first respondent (the appellant before this court in that appeal) did not possess a valid driving license to ride the motor bike is correct or not. After taking note of the fact that the original of the learner's license possessed by the first respondent had been produced before the Tribunal, the learned single Judge held that the finding entered by the Tribunal that the first respondent before it did not possess a valid driving licence to drive the motor bike cannot be sustained. The

learned single Judge however held that merely holding a learner's licence is not sufficient and the first respondent will have to prove that he had complied with the statutory requirements while riding the motor bike on the strength of a learner's license. It was for enabling the first respondent in O.P.(MV).Nos.92 and 93 of 2009 to prove the said fact that the award passed on 30.06.2011 was set aside and the claim petitions remanded to the Motor Accidents Claims Tribunal, Ernakulam. The relevant portion of the judgment of the learned single Judge in M.A.C.A.Nos.1008 of 2012 and 2257 of 2012 is extracted below for easy reference:-

“12.The quantum of compensation awarded to the first respondent in these appeals is not challenged at the time of hearing. Nor do the injuries the first respondent suffered and the relevant materials justify an interference.

13.What remains is whether finding of the Tribunal that appellant was not having a valid license to ride a motor cycle is correct or not? The Tribunal in paragraph 6 of the award has found that the appellant was not having valid driving license and hence the third respondent is entitled to recover compensation paid to the first respondent from the appellant and the second respondent.

14. It is the case of the appellant that though not a driving license, he was holding a valid learners license at the relevant time and the same was produced before the Tribunal. Anx.A1 in M.A.C.A.No.1008 of 2012 is the certified photocopy of that learners license. It is seen

that the certified photocopy is issued from the Tribunal. It follows that the original of that document was produced before the Tribunal. Still, the Tribunal has proceeded as if the appellant was not having a valid license without making any reference to the learners license. In that view of the matter, finding of the Tribunal that the appellant was not having valid driving license to ride the vehicle at the relevant time cannot be sustained and is liable to be set aside.

15. Merely holding a learners license is not sufficient. The question arises whether the appellant has complied with the statutory requirements while riding a motor cycle on the strength of a learners license. True, the appellant has a contention that an instructor was riding on the pillion. But, that is a matter for evidence.

16. In the light of the above, I am inclined to give the appellant and the third respondent opportunity to adduce evidence regarding compliance/non compliance of conditions attached to the use of learners license.

17. It is made clear that this judgment will not stand in the way of the first respondent recovering the amount awarded from the third respondent and in case the third respondent has already deposited the amount, withdrawing the said amount from the Tribunal.

Resultantly these appeals are allowed in part by way of remand as under:

(i) The finding of the Additional Motor Accident Claims Tribunal, Ernakulam in O.P(M.V).Nos.92 and 93 of 2009 that the appellant was not having a valid driving license to ride the motor cycle at the relevant time is set aside.

(ii) The direction issued by the Tribunal that the third respondent, on M.A.C.A.Nos.1008 and 2257 of 2012 payment of the amount to the first respondent could recover the same from the appellant and the second respondent is set aside.

(iii) The question whether the appellant was having a valid learners license at the relevant time and whether there was compliance/violation of the statutory requirements while riding the motor cycle with learners license is left open for decision by the Tribunal after giving both sides opportunity to adduce evidence.

(iv) For decision of the above question, O.P (M.V).Nos.92 and 93 of 2009 are remitted to the Additional Motor Accident Claims Tribunal, Ernakulam.

(v) The appellant and the third respondent shall appear before the Tribunal on 15.07.2013.

All interlocutory applications will stand dismissed.”

5. After remand, the first respondent examined himself as RW2 and another witness as RW1. He also produced and marked Exts.B1 to B4. On application filed by the third respondent insurer as I.A.No.9077 of 2013, the records relating to Crime No.7956 of 2009 of Kochi City Traffic Police Station were called for and marked as Ext.C1. The Motor Accidents Claims Tribunal thereafter considered the evidence and the materials on record and held that the first respondent had violated the policy conditions by not complying with the statutory requirements while riding the motor bike bearing registration No. KL 7 AL/6471 with a learners license. The Tribunal accordingly held that the third respondent insurer is entitled to recover from respondents 1 and 2 in O.P.(MV).Nos.92 and 93 of 2009, the

compensation amount deposited by it. The Tribunal held that though the first respondent possessed a valid learners licence at the time of the accident, he had not complied with the statutory requirements for driving a motor cycle with a learners licence. The claimant in O.P.(MV). No.92 of 2009 has filed this appeal challenging the award passed on 30.08.2014 and seeking enhancement of the compensation awarded by the Tribunal by the award passed on 30.06.2011.

6. We heard Sri.Alex Thannippilly, learned counsel appearing for the appellants. We have also gone through the lower court records which have been called for by this court. It is evident from the memorandum of appeal that the challenge in this appeal is to the award passed by the Additional Motor Accidents Claims Tribunal, Ernakulam on 30.08.2014 in O.P.(MV).Nos.92 of 2009. By that award, the Tribunal had only reiterated the earlier finding in the award passed on 30.06.2011 that the third respondent insurer is entitled to recover the compensation paid by it from respondents 1 and 2 for the reason that though the first respondent possessed a learner's license, he had not complied with the statutory requirements for riding a motorcycle with a learners licence. By the award passed on 30.08.2014, the Motor Accidents Claims Tribunal has not awarded any amount as compensation. Compensation was awarded to the appellant and her

sister, the claimant in O.P.(MV).Nos.93 of 2009 by the award passed on 30.06.2011. The appellant and her sister did not challenge the said award. The challenge was by the first respondent who filed M.A.C.A.Nos.1008 of 2012 and 2257 of 2012 in this court challenging the award passed by the Motor Accidents Claims Tribunal on 30.06.2011 in O.P.(MV).Nos.92 and 93 of 2009. The challenge in the said appeals was to the finding entered by the Tribunal that the first respondent did not possess a valid driving licence on the relevant date and therefore the insurer is entitled to recover the amount paid as compensation. The challenge was accepted and the award to the extent it held that the insurer can recover the amount paid by it as compensation from the first respondent and the second respondent was set aside and the claim petitions were remanded to the Motor Accidents Claims Tribunal for the limited purpose of considering the question whether the first respondent who possessed a valid learner's license on the date of the accident had complied with the statutory requirements while driving the motor bike bearing No.KL 7 AL/6471 on the relevant date.

7. As can be seen from the order of remand extracted above, the remand for that purpose and that purpose alone. This court did not, by the judgment delivered on 21.06.2013, set aside the award passed by the Motor Accidents Claims Tribunal in toto. The award was set aside

only for the purpose of considering the question whether the insurer can recover the compensation paid by it from the first respondent. After remand, the Tribunal held that the first respondent has not fulfilled the statutory requirements for driving a motorcycle with a learner's licence and therefore, the insurer is entitled to realise the amount of compensation paid by it from respondents 1 and 2. The appellants who did not challenge the award passed by the Motor Accidents Claims Tribunal on 30.06.2011 in time and have allowed it to attain finality cannot in our opinion, on the terms of the order of remand passed by this court on M.A.C.A.Nos.1008 of 2012 and 2257 of 2012, seek enhancement of the compensation at this stage by challenging the award passed by the Tribunal on 30.08.2014.

We accordingly hold that the instant appeal from the award passed by the Motor Accidents Claims Tribunal on 30.08.2014 is not maintainable. The appeal fails and it is accordingly dismissed in limine.

sd/-

**P.N.Ravindran, Judge**

sd/-

**Anu Sivaraman, Judge**

sj

/True copy/

P.A.to Judge