

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

MACA.No. 528 of 2013 ()

AGAINST THE AWARD IN OPMV 795/2007 of M.A.C.T., KOLLAM DATED 22-10-2012

APPELLANT/PETITIONER:

ALOYSIOUS, AGED 59 YEARS,
SON OF SEBASTIAN, A.J. BHAVAN,
NEENDAKARA VILLAGE, KOLLAM - 691582.

BY ADVS. SRI. P.B. SAHASRANAMAN
SRI. T.S. HARIKUMAR
SRI. K. JAGADEESH

RESPONDENT(S)/RESPONDENTS:

1. T.M. VINCENT
S/O. THANKACHAN, MANAMPPURATHU VEEDU
ANCHAL P.O. KOLLAM - 691 306.
 2. ASHOK KUMAR, KOYIVAYALIL VEEDU,
SAKTHIKULANGARA P.O., KOLLAM
691 581.
 3. THE DIVISIONAL MANAGER, ORIENTAL INSURANCE CO. LTD.,
KOLLAM.
 4. JAINAMMA, THALUVACHIRA HOUSE, ANCHAL VILLAGE, ANCHAL P.O.,
KOLLAM - 691 306.
 5. SAFAR THALUVACHIRA HOUSE, ANCHAL VILLAGE, ANCHAL P.O. KOLLAM
691 306.
- R1 BY ADV. SMT. T.M. BINITHA
R1 BY ADV. SRI. S. GOPAKUMAR
R3 BY ADV. SRI. A.R. GEORGE
R3 BY SRI. GEORGE CHERIAN (THIRUVALLA)
R5 BY ADV. SRI. R. NIKHIL
R5 BY ADV. SMT. P.K. PAMALA
R5 BY ADV. SRI. P. ABDUL RAZAK

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 18-11-2015, ALONG WITH MACA. 1991/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.Nos.528 OF 2013 & 1991 OF 2015

DATED THIS THE 18th DAY OF NOVEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

These appeals arise from the award dated 22.10.2012 passed by the Motor Accident Claims Tribunal, Kollam in O.P.(MV) No.795/2007. M.A.C.A.No.528/2013 has been preferred by the claimant, wherein the challenge is only against the fixation of liability against respondents 5 and 6, which according to the appellant/claimant should have been mulcted against respondents 1 and 2. M.A.C.A.No.1991/2015 has been preferred by the 6th respondent before the Tribunal, who subsequently came to be impleaded and his contention is that he was absolutely having no connection at all with the cause of action, that he was never sought to be impleaded in the party array by the claimant and that his name came to be incorporated only by way of a mistake.

2. Heard the learned counsel appearing for the appellants in both the cases, the learned counsel for the Insurance Company and the learned counsel appearing for the 2nd respondent driver of the

motor cycle.

3. The accident was on 10.4.2002, when there occurred a collision between the motor cycle ridden by the appellant/claimant and another motor cycle bearing No.KCT 8825 which was owned by the 1st respondent before the Tribunal (as RC owner) and ridden by the 2nd respondent. Name of the 3rd respondent Insurance Company was shown as the insurer of the said vehicle. The accident led to multiple injuries, which were sought to be compensated by filing the O.P.(MV) before the Tribunal. On receipt of summons, the 1st respondent/RC owner appeared before the Tribunal and filed a written statement, pointing out that he had sold the vehicle to one Mr.Sam Varghese, Thaluvachira House, Anchal, about 7 years back on 20.3.1995 and that the said person had executed an agreement in favour of the 1st respondent in this regard. The aforesaid person had agreed to effect the necessary transfer in the records of the authorities of the RTO, Punalur and as such, the 1st respondent was having absolutely no connection with the vehicle and is not liable to satisfy the claim. The 2nd respondent/driver of

the motor cycle did not choose to contest the matter and even did not appear before the Tribunal, despite the completion of service of notice. In the written statement filed by the 3rd respondent/insurer, it was contended that there was no valid policy coverage, that the motor cycle was being ridden by the 2nd respondent without a valid driving licence and hence that there was violation of the statutory/policy condition as well. The evidence adduced before the Tribunal consists of Exts.A1 to A9 alone. Nobody was examined from either side. Based on the available materials, the Tribunal held that the accident was solely because of the negligence on the part of the 2nd respondent rider of the motor cycle bearing No.KCT 8825. Amounts were awarded under different heads granting a total compensation of ₹92,060/- (rounded as ₹93,000/-) which was directed to be satisfied with interest at the rate of 9% per annum from the date of the petition, fixing the liability upon the shoulders of respondents 5 and 6. There is no dispute with regard to the quantum of compensation awarded or as to the point of negligence.

4. As mentioned already, in M.A.C.A.No.1991/2015, the

prayer is only to absolve the appellant from the liability, he being a stranger, whereas in the other appeal preferred by the claimant, the liability is sought to be refixed upon the respondents 1 and 2, i.e. the registered owner and the rider of the motor cycle, instead of additional respondents 5 and 6.

5. During the course of hearing, the learned counsel for the claimant/appellant submits that an impleading petition was filed before the Tribunal seeking to implead Mr.Sam Varghese, Thaluvachira House, Anchal as additional respondent, based on the contention raised by the 1st respondent/RC owner that the vehicle had already been transferred to the formar. But, notice sent to the said person came to be returned stating that he was no more and in the said circumstances, the legal heirs were sought to be impleaded by filing an I.A., which was allowed leading to impleadment of additional respondents 5 and 6. It is stated that there occurred a mistake, in so far as the additional respondents sought to be impleaded as the legal representatives of the deceased Sam Varghese were his mother by name '**Jainamma Varghese**' and wife by name '**Solos**', whereas the

name of additional respondents 5 and 6 came to be shown in the proceedings as '**Jainamma Varghese**' and '**Safar**' respectively. It is stated that '**Safar**', who happens to be the appellant in the connected matter is a **stranger**. The particulars of the additional 6th respondent were clearly given in the petition, but mistakenly, incorporated by the Tribunal. Certified copy of the petition filed before the Tribunal is made available for perusal of this Court. In paragraph No.5 of the affidavit dated 5.3.2012 in support of the petition, it is stated that Sri Sam Varghese did not have any children and that his mother and widow alone were the legal representatives, whose names were given as additional respondents 5 and 6 (i.e., Jainamma and Solos) as given in the petition. Still, there is a factual mistake in the body of the petition, where, it is stated that the additional respondents sought to be impleaded are the 'widow' and the 'daughter' of the deceased Sam Varghese.

6. In any view of the matter, it so happened that after impleading Jainamma Varghese - the mother of the deceased Sam Varghese as the additional 5th respondent, name of the

additional 6th respondent came to be shown as '**Safar**', in place of 'Solos'. From the above, it is clear that the additional 6th respondent by name '**Safar**' who happens to be the appellant in M.A.C.A.No.1991/2015 **is a total stranger**, having no connection with the cause of action and as such, the appeal preferred by the said person requires to be allowed. Accordingly, the award passed by the Tribunal fixing the liability upon the additional 6th respondent stands set aside and M.A.C.A.No.1991/2015 stands allowed.

7. Coming to the prayer of the claimant/appellant in M.A.C.A.No.528/2013, the version now put forth by the appellant is that the liability ought to have been mulcted upon the shoulders of respondents 1 and 2 who are the registered owner and rider of the motor cycle and not on the additional respondents. It is evident from the pleadings and proceedings that, **no such case was there for the appellant before the Tribunal** to the effect that registered owner himself was the person concerned who was owning and possessing the vehicle at the relevant time and that the liability requires to be satisfied by

him. The 1st respondent/registered owner of the vehicle appeared before the Tribunal and filed a written statement pointing out that he had sold the vehicle 7 years ago on 20.3.1995 giving the particulars of person to whom the vehicle was transferred. It was accordingly, that the claimant/appellant filed necessary I.A. to implead the actual owner who was possessing the vehicle at the relevant time as the additional 4th respondent, which was allowed. But on finding that the additional 4th respondent by name Sam Varghese has already bid farewell to this world, his legal heirs were sought to be impleaded by filing another petition which was allowed, thus leading to impleadment of additional respondents 5 and 6 as mentioned aforesaid. It was based on the said pleadings and evidence on record, that the Tribunal finalised the proceedings granting compensation and fixing the liability on the shoulders of additional respondents 5 and 6, holding that the policy issued by the 3rd respondent-Insurance Company was only for the period from 15.4.2002 to 14.4.2003, whereas the accident was prior to the date of issuance of the policy, on '10.4.2002'. Question is

whether the course pursued by the Tribunal is arbitrary, illegal or improper in any manner.

8. In support of the contention raised by the appellant/claimant, reliance is sought to be placed on the decision reported in **Baby Varghese v. Anitha Roy (2015 (3) KHC 281)** and it is contended that the registered owner of the vehicle is liable to meet the claim preferred by the claimant in so far as motor accident claims cases are concerned. But the question in so far as this case is concerned is whether a deviation from the meaning of the term 'owner' under Section 2(30) of the Act is possible in view of the qualifying words in the definition: "unless the context otherwise requires". This Court finds that the case now put forth by the claimant/appellant contending that it was none other than the 1st respondent who was the actual owner and the liability ought to have been mulcted upon him, does not find a place or room in the case projected by the said party before the Tribunal. The contention put forth by the 1st respondent before the Tribunal that the vehicle was transferred 7 years ago on 20.3.1995, also giving the particulars of registered owner, was virtually accepted by the

claimant, who filed necessary proceedings to implead the actual owner by name Sam Varghese in the party array. It was on realising that he was no more, that the legal heirs of the deceased (who actually owned and possessed the vehicle) were sought to be impleaded. That apart, no effort was taken by the appellant /claimant to establish before the Tribunal as to who had produced the vehicle before the police for being inspected by the authorities of the Motor Vehicles Department pursuant to the accident; when it was taken into custody; when was the said vehicle released by the police and to whom the said vehicle was released. The fact remains that, even after impleadment of the additional respondents 5 and 6 and despite fixation of the liability on the additional respondent No.5, who happens to be the mother of the deceased Sam Varghese, she has not chosen to challenge the verdict passed by the Tribunal and has virtually accepted the liability. This points to the established fact that possession and ownership of the vehicle was with the deceased Sam Varghese and not the 1st respondent.

9. In the above circumstances, in view of the sequence of

events and the undisputed facts revealed to the above extent, we find that no interference is warranted, but for holding that, over and above the liability fixed upon the shoulders of the 5th respondent, the liability has necessarily to be satisfied by the wrong-doer, i.e., the 2nd respondent rider as well, who was riding the vehicle without any valid driving licence and who did not appear or file any written statement before the Tribunal. Accordingly, the liability fixed by the Tribunal will stand modified and we hold that the due amount shall be satisfied by the 2nd respondent rider of the motor cycle and also by the additional 5th respondent – to the extent as to the worth of properties, if any, inherited by her from the deceased Sam Varghese. It is open for the claimant/appellant in M.A.C.A.No.528/13 to proceed against the 2nd respondent and the additional 5th respondent, whose liability shall be joint and several, to the extent as mentioned above. The parties are to bear the costs.

Since M.A.C.A.1991/2015 has been allowed and the liability cast upon the shoulders of the said appellant(additional 6th respondent) is set aside, the statutory deposit effected by the

said appellant in terms of the first proviso to Section 173 (1) of the Act will stand released to the appellant.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn

True copy

P.S.to Judge