IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

MACA.No. 709 of 2015 ()

AGAINST THE AWARD IN OPMV 1057/2004 of M.A.C.T., PALAKKAD DATED 24-02-2009

APPELLANT/1ST RESPONDENT:

E.P.BALAN AGED 78 YEARS
S/O.GOVINDAN NAIR, 15/250, CHURCH ROAD
SULTHANPET, PALAKKAD
PIN: 678 001 (OWNER OF CAR BEARIG REG.NO.KRZ 9394)

BY ADV. SRI.A.K.MADHAVAN UNNI

RESPONDENTS/PETITIONER & RESPONDENTS:
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1. RAVI, S/O.MUNIAPPAN
S/O.MUNIAPPAN (C/O.K.G.KRISHNAN), CHUNGATH HOUSE
KAVILPAD, OLAVAKKODE
NOW RESIDING AT HARIYAR CHITHRADURGA
BANGLORE - 577 546.

2. SUNDARAN, S/O.GOVINDAN NAIR,
SUBA SADAN, VADAKKANTHARA
PALAKKAD - 678 014 (DRIVER OF CAR BEARING NO.KRZ 9394)

3. NATIONAL INSURANCE COMPANY LIMITED,
EAST FORT COMPLEX, FORTMAIDAN
PALAKKAD - 678 013 (INSURER OF CAR KRZ 9394)

R3 BY ADV. E.M JOSEPH
R1 BY ADV. SRI.A.R.GANGADAS
R2 BY ADV. SRI.K.P.ANTONY BINU
BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.
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M.A.C.A. No.709 of 2015
= = = = = = = = = = = = = = = = =
Dated this the 19th day of August, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the first respondent in O.P.(MV).No.1057 of 2004 on the file of the Motor Accidents Claims Tribunal, Palakkad. The first respondent is the claimant and respondents 2 and 3 are respondents 2 and 3 respectively therein. The first respondent, the claimant, instituted O.P.(MV).No.1057 of 2004 on 16.11.2004, claiming the sum of Rs.3,00,000/- as compensation for the injuries sustained by him in a motor accident that took place on 09.04.2004. He had alleged that on account of the rash and negligent driving of the motor car owned by the appellant by its driver, the second respondent, it collided with the motor bike on which he was a pillion rider and in that accident he sustained grievous injuries, leading to his hospitalisation for a period of 16 days.

2. The appellant did not enter appearance notwithstanding service of notice. He was therefore set ex parte. Though the second respondent driver entered appearance, he did not file a written statement. The third respondent, the insurer of the appellant's motor

car, entered appearance and filed a written statement, contending that the accident took place on account of the rash and negligent driving of the driver of the motor bike. It contended that respondents 1 to 3 in the claim petition are not necessary parties. It also disputed the age, occupation and income of the claimant and contended that the compensation claimed is exorbitant and excessive.

3. The Motor Accidents Claims Tribunal considered the rival contentions and held relying on the police records that the accident took place on account of the rash and negligent driving of the motor car belonging to the appellant, by its driver the second respondent. The Tribunal thereafter held that Ext.A6 discloses that the offending motor vehicle, namely the appellant's motor car was covered by a valid policy of insurance during the period from 11.02.2004 to 10.02.2005 and therefore, on the date of the accident, namely 09.04.2004 it was covered by the said policy. However, on the short ground that Ext.A6 is an Act only policy and as on the date of the accident pillion rider of a two wheeler is not covered by an Act only policy, the Tribunal exonerated the insurer from liability and held that the appellant and his driver, the second respondent are jointly and severally liable to compensate the claimant. The Tribunal accordingly passed an award directing the appellant and the second respondent to jointly and

severally pay the same of Rs.73,042/- awarded as compensation. The said award to the extent it holds that the appellant and the second respondent liable to pay the sum of Rs.73,042/-with interest and costs is under challenge in this appeal.

4. We heard Sri.A.K.Madhavanunni, learned counsel appearing for the appellant, Sri.A.R.Gangadas, learned counsel appearing for the first respondent, Sri.Antony Binu K.P., learned counsel appearing for the second respondent and Sri.E.M.Joseph, learned counsel appearing for the third respondent. We have also gone through the pleadings and the materials on record. It is not in dispute before us that the motor car owned by the appellant, the driver of which was found to be negligent was covered by a valid policy of insurance issued by the third respondent. However, on the short ground that the pillion riders are not covered by an Act only policy of insurance, the Tribunal exonerated the insurer of the motor car from liability on the erroneous assumption that the third respondent is the insurer of the motor bike and not the insurer of the motor car. Paragraph 9 of the impugned award which is extracted below will establish the said fact.

> "9. I have already taken the view that the accident had happened due to the rash and negligent driving of the motor car by the 2nd respondent. The 3rd respondent has

neither admitted or denied the policy of the said offending vehicle. But the petitioner has produced the copy of the policy which is marked as Ext.A6. The said policy will reveal that the offending vehicle was insured with 3rd respondent for the period commencing from the date 11.02.2004 and till the date 10.2.2005. The accident had happened on 9.04.2004. If so it is explicit that the offending vehicle had valid insurance coverage at the time of the accident. But the petitioner was the pillion rider on two wheeler. It is present law that pillion riders are to be construed as gratuitous passengers and their risk are not covered by Act only policy. The policy, Ext.A6 is an Act only policy. If that be the position the 3rd respondent is not liable to indemnify the 1st respondent. In other words the 3rd respondent is not liable to compensate the petitioner. On the other hand respondent Nos.1 & 2 are jointly and severally liable to compensate the petitioner.

5. It was on account of the said erroneous finding that the Tribunal directed the appellant and its driver to satisfy the award. The claimant had, after the award was passed, filed I.A.No.810 of 2010 seeking a review of the impugned award to the extent it exonerate them, accompanied by I.A.No.809 of 2010 to condone the delay in filing the former application. The said applications were dismissed by order passed on 17.06.2013 on the ground that the Tribunal has no power to review its own award and that the remedy of the parties lies

elsewhere. Even while dismissing the review petition, the Tribunal has found that the finding on issue No.2 which is extracted earlier is contrary to the finding entered on Issue No.1. In other words, the Tribunal held that the finding entered by it in the impugned award that the third respondent is not liable to indemnify the insured is erroneous. On the materials on record, the conclusion is inescapable that the finding entered by the Motor Accidents Claims Tribunal regarding that aspect of the matter cannot be sustained. Paragraph 9 of the impugned award which is extracted above discloses that the Tribunal has exonerated the insurer on the erroneous premise that it is the insurer of the motor bike. It is not in dispute that the third respondent was the insurer of the motor car at the relevant time. It is also not in dispute that the offending vehicle involved in the accident is the motor car belonging to the appellant. The third respondent has no case that it is not liable to indemnify the insured. Its only case is that the claim should have been made against the owner of the motor bike and its rider. The finding entered by the Tribunal that the third respondent insurer is not liable to indemnify the appellant cannot therefore, in our opinion be sustained.

For the reasons stated above, we allow the appeal, set aside the finding entered by the Motor Accidents Claims Tribunal, Palakkad in the award passed by it on 24.02.2009 in O.P.(MV).No.1057 of 2004 to the effect that the third respondent herein is not liable to compensate the claimant. Consequently, in modification of the impugned award we pass an award allowing the first respondent claimant to realise the sum of Rs.75,042/- with interest at 7.5% per annum from the date of petition, namely, 16.11.2004 till the date of deposit with costs quantified to Rs.400/- (costs in the Tribunal) and direct the third respondent insurer to deposit the said amount within two months from the date of receipt of a certified copy of this judgment. The parties shall suffer their costs in this court. Needless to say the Tribunal shall refund to the appellant the sum of Rs.25,000/- deposited by him on 21.02.2015 for the purpose of complying with the stipulation regarding pre-deposit contained in the first proviso to sub-section (1) of section 173 of the Motor Vehicles Act, 1988.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj