

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

MACA.No. 789 of 2015 ()

AGAINST THE AWARD IN OPMV 2965/2005 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
THRISSUR DATED 06-12-2012

APPELLANT/5TH RESPONDENT:

THE HEAD MASTER, S.N.V.U.P. SCHOOL
THALIKULAM, THRISSUR DISTRICT.

BY ADVS. SRI. C. D. DILEEP
SMT. SHYLAJA VARGHESE

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 4 AND 6:

1. N.K.INDIRA, AGED 34 YEARS
W/O.ASHOKAN, UNNIYARAMPURAKKAL HOUSE, P.O.THALIKKULAM
PALLIMUKKU, THRISSUR. 680 569
 2. VEERANKUTTY, S/O.ALIKUTTY
THAVILIL HOUSE, KUZHIMANNA DESOM
ERANADU TALUK MALAPPURAM DISTRICT. 673 641.
 3. MRS. SIVAKARI SUNDARI
W/O.SENTHIL NATHAN, FLAT NO.52, SATHRI ROAD
VADUTHALA, COCHIN, ERNAKULAM DISTRICT 682 023.
 4. ABDUL RAZAK
S/O.KUNCHAVARAN HAJI, BANGULAM HOUSE, KUZHIMANNA DESOM
ERNAD TALUK, MALAPPURAM DISTRICT -673 641.
 5. UNITED INDIA INSURANCE CO. LTD.
BRANCH OFFICE, SUBKA BUILDING, THAZEPALAM
TIRUR. 676 101.
 6. M.N. PRADEEP, S/O.NARAYANAN
MEPPARAMBIL HOUSE, P.O.VADANAPPILLY BEACH
THRISSUR 680 614
- R6 BY ADV. SRI.K.A.SATHEESA BABU
R5 BY ADV. SRI.T.V.AJAYAKUMAR
SRI. JOHN JOSEPH VETTIKKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR)

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

M.A.C.A.No.789 OF 2015

DATED THIS THE 17th DAY OF NOVEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

This is a classic example where a Headmaster of a school, who is to mould the budding generation of tomorrow, to be the responsible and law-abiding citizens, of the Nation carrying out the real mission as a 'Teacher' has stooped to the level of a layman, who has wrongly understood and propounds "Economics' as the theory of a miser to save money, by not taking insurance policy to provide statutory coverage in respect of the school van owned by him, thus displaying scant regards to the rule of law.

2. The Headmaster, who happens to be the owner of the school van bearing No.KL-02/N-9873 has approached this Court, being aggrieved by the award passed by the Tribunal fixing the liability in respect of the injuries caused to an employee of the school - an 'Aaya', who was travelling in the school van in the road traffic accident occurred on 13.6.2005 involving the aforesaid vehicle.

3. The sequence of events as narrated in the appeal shows that the injured, i.e., the 1st respondent herein who was an employee of the school belonging to the appellant was travelling in the school van from South to North. While so, when the vehicle reached near a petrol bunk, at Thriprayar, the vehicle was taken to the right to enter into the petrol bunk when a Qualis van bearing No.KL-7/AB-9461 owned by respondents 1 and 2, driven by the 3rd respondent and insured by the 4th respondent respectively before the Tribunal, came from the opposite side, i.e., from North to South and hit against the left side of the school van, as a result of which, the claimant sustained serious injuries which was sought to be compensated by filing a claim petition before the Tribunal.

4. The claim was originally preferred against the respondents 1 to 4, i.e., the parties in relation to the Qualis van. It was later, that the appellant herein and the driver of the school van were brought in as additional respondents. The 4th respondent Insurance Company filed a written statement before the Tribunal contending that though a policy was issued, the

ownership of the vehicle was transferred to the 1st respondent and no step was taken to transfer the policy to the name of the said respondent. It was also pointed out that the driver of the Qualis van did not have any valid driving licence to drive light motor vehicle and that he was having licence only to drive 'three wheelers'. That apart, the policy issued by the 4th respondent was for a private vehicle, whereas a contract carriage permit was issued and obtained by the owner of the Qualis van and as such, there was clear violation of statutory/policy condition in all respects and hence the Insurance Company was not liable to satisfy the claim under any circumstance.

5. The evidence adduced before the Tribunal consists of Exts.A1 to A11 marked from the side of the claimant, apart from Exts.B1 to B5 produced from the part of the respondents. After referring to the materials on record, particularly the pleadings and evidence let in and also after making a specific reference to the place of occurrence, as described in the scene mahazar, the Tribunal arrived at a finding that the accident was due to the negligence of the drivers of both the vehicles and it was

accordingly, that the same was fixed in the ratio of 50:50, as in given paragraph No.8 of the award. Considering the facts and figures, the Tribunal awarded compensation under different heads and fixed the total compensation as ₹1,06,800/- which was directed to be satisfied with interest at 8% per annum. The Tribunal held that the 1st respondent/owner of the Qualis van was liable to satisfy 50% of the compensation. In respect of the remaining 50%, the same was jointly and severally fixed on respondents 5 and 6. This in turn is sought to be challenged by the owner of the school van, who is the Headmaster of the school as mentioned already.

6. Heard the learned counsel for the appellant at length, who points out that there was no case against the appellant earlier and that such a case was sought to be mooted by the claimant only at a subsequent stage, when it was brought out from the contentions taken by the Insurance Company that there was violation of the statutory/policy conditions, in so far as the driver of the Qualis van was not having valid driving licence and further that the vehicle was being operated as a 'taxi', though the

same was insured only as a 'private car'. It was in such circumstances, that 50% of the liability was ordered to be satisfied by the appellant herein, for which there is absolutely no rhyme or reason, submits the learned counsel. It is also pointed out that the fixation of negligence is not based on any valid and tenable ground/evidence and as such, the same requires to be intercepted by this Court. The absence of valid driving licence or violation of the permit in respect of the Qualis van cannot be a ground to shift a portion of the liability to the appellant and hence the challenge.

7. This Court finds it difficult to agree with the said proposition for more than one reason. Admittedly, the road is lying straight from North to South and clear vision was there for both the vehicles. The oncoming vehicle i.e., the Qualis van from the North was very much visible for the driver of the van owned by the appellant. Reasonable care and caution was not taken by drivers of both the vehicles to avoid the accident and it was in such circumstance, that the Tribunal, based on the available materials on record, fixed the negligence in the ratio of 50:50.

Even otherwise, it is seen that no attempt was made by the appellant herein or the driver of the school van who were brought into the party array as additional respondents 5 and 6 to establish the facts and figures and nobody was examined from their side. On the contrary, they chose to take rest on arm chair, without raising any contention and were set ex parte.

What disturbs this Court more is that the school van belonging to the appellant was having no insurance coverage. Section 147 of the Motor Vehicles Act clearly stipulates the need to have insurance coverage for any vehicle to be put on the road. The appellant herein, being the Headmaster of the school, ought to have been more vigilant to meet the statutory requirements and the fact remains that the vehicle was never caused to be insured and the same was being operated absolutely without any regard to the rule of law, risking the lives and limbs of the children and staff who were being carried in the vehicle and also without any regard to the safety and security of the general public who are passers by, whether as pedestrians or proceeding in other vehicles. This cannot but be deprecated in the strongest

possible words, as the appellant herein who happens to be the Headmaster of the school appears to be having no idea as to the duty/role that is to be played by him as a role model to the students. It is well said that every person has to be melted before moulded and the process of melting and moulding takes place more in the school. If the melting goes wrong, it goes without saying that the mould will be of no use. The young children who are to be taught by the teachers, to be the responsible citizens of tomorrow are being shown a wrong precedent displaying how the law can be ignored at least with regard to the basic necessity to have the vehicle belonging to the school insured, providing statutory coverage, making unlawful gains. Without discharging this statutory duty and even without appearing before the Tribunal to contest the matter on valid grounds, if any, the Headmaster has rushed to this Court by filing the appeal, seeking to intercept the award passed by the Tribunal and to absolve the school/ Headmaster from the liability. We find absolutely no tenable ground to cause for any interference. Appeal is devoid of any merit. None of the grounds raised in

support of the appeal could be held as tenable. Accordingly, interference is declined and the appeal stands dismissed with a cost of ₹5,000/-.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn

True copy

P.S.to Judge