

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

MACA.No. 286 of 2011 ()

AGAINST THE AWARD IN OPMV 327/2006 of MACT, KOZHIKODE DATED
30-12-2009

APPELLANT/2ND RESPONDENT:

THE SECRETARY, PARAPPANANGADI, MOTOR TRANSPORT
CO-OP. SOCIETY LTD.
PARAPPANANGADI P.O., MALAPPURAM DISTRICT, PIN-676303.

BY ADVS.SRI.HARISH R. MENON
SRI.K.T.SHYAMKUMAR
SMT.M.S.KIRAN

RESPONDENTS/CLAIMANTS:

1. ALIYAMMA T.U., W/O BABY K.F.
AGED 59 YEARS, KANNAMKULATH HOUSE, NHANIKADAVU
KANHANGAD VILLAGE, P.O.OZHINHAVALAPPU, KANHANGAD.
671315

2. BABY K.F., S/O.FRANCIS,
AGED 61 YEARS, KANNAMKULATH HOUSE, NHANIKADAVU
KANHANGAD VILLAGE, P.O.OZHINHAVALAPPU, KANHANGAD
671315.

3. M.M.RAJI MOL, D/O.BABY K.F.,
AGED 29 YEARS, KANNAMKULATH HOUSE, NHANIKADAVU
KANHANGAD VILLAGE, P.O.OZHINHAVALAPPU, KANHANGAD.
671315

4. MUNSIL K., S/O.PAREEKUTTY K.,
KANNAMKULATH HOUSE, NHANIKADAVU, KANHANGAD VILLAGE
P.O.OZHINHAVALAPPU, KANHANGAD.671315 (CORRECTED)

5. THE NEW INDIA ASSURANCE CO. LTD.,
K.H.BUILDING, THAZHEEPALAM, P.O.TIRUR
MALAPPURAM DISTRICT, PIN-676101.

* THE ADDRESS OF THE 4TH RESPONDENT IS CORRECTED VIDE ORDER DATED 18.12.2013 IN I.A.NO.3397/2013 AS :

MUNSIL , S/O PAREETHKUTTY, KALPALATHUL HOUSE
KODAKKAD, VALLIKUNNU, MALAPPURAM DISTRICT

R5 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.286 OF 2011

Dated this the 24th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is one filed by the owner of the vehicle involved in an accident which was the subject matter of O.P.(MV)No.327/2006. The Society herein is aggrieved by the direction by the Tribunal allowing recovery of the amount paid by the Insurance Company.

2. In paragraph 31 of the award, based on Ext.P3, the Tribunal took the view that on the date of the accident, the fitness certificate of the vehicle had expired. In paragraph 32, it was held that in the light of the same even though the insurer cannot avoid the liability towards the insured, the Insurance Company is liable to satisfy the award in favour of the 3rd party at the first instance and then to recover the awarded amount from the owner or driver or from both.

3. The learned counsel for the appellant submits that in the light of the decision of a Full Bench of this Court in

M.A.C.A.Nos.2526/2009 and 2507/2010, the appellant is entitled to succeed.

4. We heard the learned counsel for the Insurance Company also.

5. The Full Bench in the operative portion of the judgment held as follows :

“ We hold that the insurer cannot claim exoneration from its liability to indemnify the owner of a vehicle in respect of injuries to third parties if the vehicle gets involved in the accident after the expiry of period of validity of fitness certificate or permit, merely on account of such technical violations.”

6. In the light of the declaration of law made by the Full Bench, the appellant is entitled to succeed. We hold that the appellant is not liable to satisfy the award.

7. The learned counsel for the appellant further submits that the appellant has deposited ₹3,22,714/- pursuant to the interim order in I.A.No.553/2011 in this appeal. In the light of the view taken by us that the appellant will not be liable, we permit the appellant to

withdraw the said amount. It is declared that the Insurance Company will have to satisfy the award.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.VASHA, JUDGE

SV.