

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

MACA.No. 878 of 2007 ()

(AGAINST THE AWARD IN OPMV 1545/2001 of SPL.COURT FOR EC ACT CASES
&MACT,TSR DATED 11-05-2006)

APPELLANT/PETITIONER:

SASIKUMAR, S/O RATNAM,
K.K.DISTRICT, TAMILNADU.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS/RESPONDENTS:

** 1. LAKSHMAN, KOTTAM DESOM,
KURUMBILAVU.

(* DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE APPELLANT VIDE ORDER DATED 14.11.2011 IN MACA NO.878 of
2007)

2. P.K.MOHAMMED ALI,
PALIYATHAZHATH HOUSE, P.O.CHERPU, THRISSUR.

3. THE ORIENTAL INSURANCE CO. LTD.,
BRANCH OFFICE, CITY HEIGHTS BUILDING, CHALAKUDY.

R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
20.10.2015, THE COURT ON 09-11-2015 DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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Dated this the 9th November, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

The appeal arises from the award passed by the MACT, Thrissur in O.P.(MV)No.1545 of 2001 granting compensation in respect of the injuries sustained by the appellant in a road traffic accident. The grievance is that the amount awarded by the Tribunal is abysmally on the lower side and hence is sought to be enhanced, based on the grounds raised in the appeal.

2. The accident occurred on 01.04.2001, when an autorickshaw bearing No. KL.8-M/3049 (Goods Autorickshaw) in which the appellant was travelling, allegedly accompanying the goods, overturned causing serious injuries to him. In fact, one more person was travelling in the said vehicle and he also sustained injuries. The appellant filed O.P.(MV)No.1545 of 2001, whereas the other injured filed OP(MV)1991 of 2001. The

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autorickshaw, in fact, was owned by the second respondent, driven by the first respondent and insured by the third respondent. Attributing negligence solely on the driver of the autorickshaw, the injuries were sought to be compensated by the respondents.

3. In the written statement filed by the first respondent, it was contended that no negligence was there on the part of the first respondent in driving the vehicle and that he was holding a valid driving licence, adding that the vehicle was insured by the third respondent, who, would be liable to satisfy the compensation, if any.

4. The second respondent filed a written statement contending that he was not the owner of the vehicle at the relevant time and that he had already transferred ownership and possession of the vehicle to one Mr.Durai, for a consideration of Rs. 48000/-, on 05.01.2001. It was also stated that he had no connection, whatsoever, with the first respondent and that the said respondent was never employed by him. The age, occupation, income etc were also disputed by

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the second respondent.

5. The third respondent Insurance Company sought to dispute the liability pointing out that the passengers in the Goods Carriage were not covered under the policy issued in respect of the Goods Autorickshaw. It was also contended that the vehicle did not have any valid permit on the date of the accident and as such, it could not have been plied on the road under any circumstance. The absence of valid driving licence for the driver was also raised as a ground to dispute the liability, besides disputing the age, occupation, income and such other relevant aspects.

6. Both the Original Petitions were taken up together and evidence was adduced jointly. The appellant was examined as P.W.1 and documents produced were Exts.A1 to A19 and Ext.B1 copy of the Policy. After analysing the evidence on record, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver of the vehicle and proceeded to work out the compensation and fix the liability accordingly. A total compensation of Rs.60200/-

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was awarded by the Tribunal, which was directed to be satisfied with interest at the rate of 7% per annum. The Tribunal also arrived at a finding that, though the second respondent had contended that he was not the owner of the vehicle during the relevant time and that he had transferred the vehicle to some other person, it was not substantiated. Further, he remained to be RC owner and Ext.B1 policy was also standing in the name of the second respondent. It was further observed that even as per Ext.A5 charge sheet, the RC owner of the vehicle was none other than the second respondent.

7. The contention of the insurer that they were not liable to satisfy the compensation as the vehicle was a 'Goods Carriage', was repelled and it was held by the Tribunal that, by virtue of the mandate of Section 147 of the M.V.Act, the Insurance Company was bound to satisfy the liability in respect of owner or his representative accompanying the goods. A factual finding was also rendered that the appellant was accompanying the goods in the vehicle and thus the liability was shifted to the shoulders of the Insurance Company.

8. However, the contentions raised by the Insurance Company that there was no valid permit for the vehicle at the relevant time was accepted by the Tribunal. Reference was also made to Ext.A5 charge sheet , whereby the police had registered a crime against the first respondent/driver under Section 66 of the M.V.Act, r/w Rule 192 of the M.V.Rules, as the vehicle was being plied without valid permit. In the said circumstance, observing that violation of the statutory/policy condition was established, the right of recovery was given to the Insurance Company, to have it recovered from the owner of the vehicle, after satisfying the claim towards the claimant.

9. Inadequacy of the compensation awarded by the Tribunal is the subject matter of challenge in this appeal. The learned Counsel for the Insurance Company submits that the finding of the Tribunal that the Insurance Company is liable to satisfy the claim in respect of the appellant who was travelling in a 'Goods Autorickshaw', sharing the seat of the driver is not correct or sustainable in view of the law declared by the Apex Court reported in **AIR 2008 SC 2871** (**United India**

Insurance Co.Ltd. vs. Suresh K.K.). The learned Counsel submits that the 'Goods Autorickshaw' involved in the instant case was not having any seat to accommodate anybody in the cabin of the autorickshaw, other than the driver and as such nobody, whether he be the owner or his representative or otherwise, was intended to be carried in the vehicle. Exactly similar circumstance was considered by the Supreme Court in Suresh's Case (cited supra). As seen from paragraph 13 of the the said judgment, it was held that, if the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by policy of insurance. It was also held that in a 'three wheeler goods carriage, the driver could not have allowed anybody else to share his seat and that, no other person, whether as a passenger or as an owner of the vehicle is supposed to share the seat of the driver, thus approving the violation of the conditions of the contract of insurance. The appeal preferred by the Insurance Company against the verdict passed by this Court mulcting the liability upon the insurer, was allowed. However, in view of the particular facts and

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circumstances, observing that the appellant Insurance Company had already deposited the amount pursuant to the direction issued by the Supreme Court on 13.11.2006 while granting the interim order, the insurer was set at liberty to recover the amount from the owner/insured.

10. The learned Counsel for the insurer further submits that the owner or his representative accompanying the goods or the employee of the insured, as the case may be, can be carried in a goods carriage only in the 'cabin' of the vehicle; that too, only to the permitted extent subject to availability of seats. The risk of a person who is travelling on the platform or anywhere else other than the cabin of a goods carriage, will not come within the purview of coverage under the policy, as held by the Supreme Court in **2008(1) SCC 423** [**National Insurance Co.Ltd. vs. Cholleti Bharatamma and others**] .

This being the position, in so far as the autorickshaw involved herein was not having any additional seat, than the 'sole seat' intended for the driver, the direction given to meet the liability, though with right of recovery, is beyond the scope of statutory

prescription and terms of the policy.

11. The learned Counsel for the appellant however submits that the liability fixed upon the Insurance Company by the Tribunal has become final, as the verdict already passed by the Tribunal has not been chosen to be challenged by the Insurance Company. The submission of the learned Counsel for the Insurance Company is that, it was only since the 'right of recovery' was reserved in favour of the Insurance Company. If this be the position, same course has to be adopted in the case of enhancement of compensation as well, submits the learned Counsel for the appellant. It is also added by the learned Counsel that the 'right of recovery' given by the Tribunal in favour of the Insurance Company itself is not correct, as it was based on the finding that the vehicle was not covered by valid permit at the relevant time, which will not give a right to the insurer to effect the recovery from the insured, in the light of the ruling rendered by a Full Bench of this Court in **2015 (2) KLT 139(FB) (*Augustine vs. Ayyappankutty*)**

12. The above submission is required to be considered, as

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compensation, if at all any, enhanced by this Court would have to be permitted to be recovered from the Insured and if such a course is not permissible by virtue of law declared by the Full Bench, appropriate observation has to be made in this regard as well. In fact, the right of recovery was awarded by the Tribunal, after hearing the second respondent/insured as well, who had filed a written statement disputing the ownership of the vehicle, which however was not accepted, as not established. The said finding has become final, as the second respondent/insured has not chosen to challenge the right of recovery awarded by the Tribunal and the same fate has to continue in the appeal as well, as appeal is a continuation of the original proceedings.

13. In the instant case, the appeal was filed with a petition to condone the delay of 245 days in filing the appeal. Notice sent to the second respondent/insured was returned 'as refused' and in the said circumstance, service was declared as complete in respect of the second respondent, as per the order dated 18.09.2012. It was thereafter, that the delay of 245 days was condoned as per the order dated 04.10.2012, making it clear

that, if any enhancement was ordered, the appellant would not be entitled to get interest for the period of 245 days of delay.

14. With regard to the decision rendered by the Full Bench, holding that expiry of the 'permit' of a vehicle will not enable the insurer to get the right of recovery from the insured; it is to be noted that no effort was taken by the parties on both sides to bring the actual position of law as on date, to the notice of the Full Bench, when the said judgment was rendered. Way back in the year 2004 itself, the law was laid down by the Apex Court in **National Insurance Company vs. Challa Bharathamma** (2004(3) KLT 454) holding that absence of valid permit on the date of the accident, is a valid ground of defence for the insurance company under Section 149(2)(a)(i)(c) of the M.V. Act. The observation of the Supreme Court in paragraph 12 is very relevant; hence it is extracted below :

“12. High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has a permit, but has

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violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of S.149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.

The contention put up before the Supreme Court, that no violation of any of the conditions of the permit was involved (as no permit was in existence), was rejected by the Apex Court, holding that person having no permit could never be placed above a person who is having permit, but has violated some of the conditions contained in the permit. The said decision was never brought to the notice of the Full Bench by either side, leading to mis-declaration of law already declared by the Apex Court. Since the law stands well declared by the Apex Court, which is the law of the land by virtue of Article 141 of the Constitution of India, we do not find it necessary to cause a further reference in this regard and we hold that the declaration made by the Tribunal granting right of recovery in favour of the insurer for want of necessary permit on the date of the

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accident, is well within the four walls of law in view of the decision rendered by the Supreme Court in **2004(3) KLT 454** (cited supra).

15. Coming to the question whether any enhancement of compensation is justified and if so, who is to satisfy the same, it is necessary to go into factual aspects as to the nature of injuries and the adverse consequences resulted. The injuries sustained by the appellant are discernible from Ext.A2 wound certificate and as discussed by the Tribunal in paragraph 10 of the award, which shows that he had sustained compound fracture in left forearm 7 cm above the wrist, exposing fractured ends of bones and muscles underneath. There was also loss of skin by 2cm in diameter at the side of the exposure, leading to hospitalisation of 30 days. The appellant was stated as a general worker, allegedly earning a sum of Rs.5000/-per month. Observing that no evidence was adduced in this regard, the Tribunal (considering the date of the accident having occurred on 01.04.2001), adopted a sum of Rs.2000/- as the notional income to work out the compensation. The disability certificate

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Ext.A11 was not accepted, as Ext.A11 was marked in evidence "subject to further proof", which was not adduced. In the said circumstance, the notional extent of 5% was fixed as the disability and a sum of Rs.21600/- was awarded under the head 'compensation for permanent disability', reckoning the multiplier of '18', based on the age of the injured as 31 years . The amounts awarded by the Tribunal under different heads are as given below:

Head	Amount awarded by the Tribunal (Rs.)
Loss of earning	10000/-
Expense for transportation	2000/-
Extra nourishment	2000
Expense for clothing and articles	500/-
Medical expense	7100/-
Expense for bystander	1000/-
Compensation for Pain and suffering	8000/-
Compensation for permanent disability	21600/-
Loss of amenities and enjoyment in life	8000

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Head	Amount awarded by the Tribunal (Rs.)
TOTAL	60200

16. The fact that the appellant was hospitalised for a period of 30 days pursuant to serious injuries, involving fracture of bones with exposure of broken bones and muscles underneath, has been taken note of by the Tribunal. Still, only a sum of Rs.8000/- was awarded towards 'pain and suffering', which requires to be enhanced to Rs.15000/- considering the economic circumstances prevailing on the date of accident, thus resulting in a balance compensation of **Rs. 7000/-** to be paid to the appellant. Similarly, a sum of Rs.8000/- was awarded towards loss of amenities and enjoyment in life. The gravity of the injuries sustained, the ordeal undergone by the appellant, the disability resulted from the accident etc. are to be considered together and as such, we find it fit and proper to grant a further sum of **Rs.7000/-** under this head as well. The Tribunal has awarded

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only 5 months' income as the loss of earning, granting Rs.10000/-, which stands enhanced to Rs.12000/-, thus resulting in a balance compensation of **Rs.2000/-**. Only a sum of Rs.1000/- has been granted towards bystander's expense, which will stand enhanced to Rs.2000/-, necessitating satisfaction of balance sum of **Rs.1000/-** under the above head. Thus, the total additional compensation payable comes to **Rs.17000/-** (Rupees seventeen thousand only). The said enhanced compensation will carry interest at the rate of **9% per annum** from the date of the petition till satisfaction, except for the period of 245 days' of delay, which was directed to be excluded as per order dated 04.10.2012 passed by this Court while condoning the delay in filing the appeal.

17. Regarding the liability to pay, as mentioned already, the finding of the Tribunal that, it has to be primarily satisfied by the Insurance Company, with liberty to have the same recovered from the insured/second respondent in view of absence of valid permit, has become final; in so far as it has not been subjected to challenge either by the Insurance Company or by the Insured.

18. With regard to the reliance sought to be placed on the decision rendered by the Apex Court in **AIR 2008 SC 2871** (**United India Insurance Co.Ltd. vs. Suresh K.K.**), it was a case where the three wheeler Goods Autorickshaw was not having any additional seat to carry anybody other than the driver. There was also a further case that no goods were actually being carried in the vehicle at the relevant time. A finding was rendered by the Apex Court on both the above grounds. Coming to the instant case, the fact that goods were being carried in the vehicle at the relevant time stands admitted. The dispute is only with regard to the question whether anybody else was permitted to be carried in the vehicle or whether the appellant was travelling along with the driver, sharing his one and only seat available in the vehicle. A copy of the policy was produced before the Tribunal as Ext.B1, wherein the seating capacity was shown as 'zero'. At the same time, it was a 'comprehensive policy' providing for own damage as well, and necessary premium has been collected under 'A' segment of the Schedule. Coming to 'B' segment of the Schedule of premium, liability to public risk

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(Basic) was covered by collecting premium of Rs.1183/-. A sum of Rs.75/- was collected for coverage towards unlimited TPPD (Third Party Property Damage) and yet another sum of Rs.15/- was collected towards legal liability for paid Drivers/Workmen No.1. The learned Counsel for the Insurance Company submitted that the said premium of Rs.15/- was collected only to provide additional coverage to the driver/Workmen No.1, over and above the extent of liability to be satisfied under the M.V.Act in terms of Section 147(2)(b)(ii) with reference to extent as payable under the Workmen's Compensation Act. But this is not discernible from the policy schedule and the terms and conditions were never produced before the Tribunal in this regard. While collecting additional premium of Rs.75/- towards TPPD, there was a specific endorsement that, it is for the Cover for Unlimited Amount towards TPPD. No such wording is used as to the collection of Rs.15/- in respect of the Paid Driver/Workmen No.1, if it were intended to provide such wider coverage over and above the limit under the Workmen's Compensation Act.

19. Driver of a Goods carriage comes within the statutory

coverage under Section 147 of the M.V. Act; even under an 'Act Only' policy (to the extent payable under the Workmen's Compensation Act) and no additional premium is required to be collected to provide such coverage to driver. Collection of additional premium is stated as in respect of Paid Drivers/Workmen No.1 and it is shown as in respect of 'legal liability'. If the word 'legal liability' are to be construed as statutorily liability, the extent is clearly discernible from Section 147(2); which makes a reference to the ceiling under the Workmen's Compensation Act. If this be the position, no additional premium was necessary to meet the 'legal liability' or statutory liability in respect of the claim of a driver engaged for driving the goods carriage. The RC particulars of the vehicle were not caused to be produced before the Tribunal and is not made available before this Court as well.

20. It is true that the parties are at liberty to obtain additional coverage by paying additional premium as observed by the Constitution Bench of the Supreme Court in **New India Assurance Co.Ltd. vs.Jaya** [2002 (1) KLT 596(SC)] and such

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coverage can only be available, if the vehicle is manufactured and intended to carry such number of persons as permissible in accordance with law, (that is to be carried in the cabin of the vehicle). When the law categorically states that the Goods carriage is not intended to carry any passengers, as discernible from the definition of the term 'goods carriage' under section 2 (14) of the Act , which is a clear deviation from the definition of term 'goods vehicle' under Section 2(8) of the unamended act, as explained by the Apex Court in **New India Assurance Co. Ltd. vs. Vedwati ((2007) 9 SCC 486)**, which has been referred to in the subsequent decision by the Supreme Court in **National Insurance Co. Ltd. vs. Cholleti Bharatamma [(2008)1 SCC 423]**, there cannot be any wider coverage merely by virtue of any agreement between the insured and the insurer, accepting additional premium . In other words, if a contract of insurance is entered into between the insured and the insurer, contrary to the relevant provisions of law prohibiting carriage of any person in a Goods carriage (other than the permissible extent), whether it be as the owner or his representative accompanying the goods

or as the employee of the injured, coverage cannot be stretched to have it included, as there cannot be any valid contract, if it is contrary to any provision of law. In other words, any contract of insurance to cover the risk in respect of the motor vehicles has necessarily to be in conformity with the other relevant provisions of the M.V.Act as well, and never contrary to the same. However, the circumstances under which the additional premium of Rs.15 was collected has not been established by the Insurance company. Whether any additional seat was available or not, is also not seen established either before the Tribunal or before this Court. In the said circumstance, we find that the benefit should go to the claimant /victim and not to the Insurance Company. We find support from the principles enunciated by the Constitution Bench of the Apex Court in interpreting the policy as per the decision reported in ***AIR 1966 SC 1644 (General Assurance Society vs. Chandmull Jain)*** (Paragraph 11).

21. In the above facts and circumstances, we hold that the additional compensation awarded by this Court requires to be

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satisfied by the third respondent Insurance Company. We grant liberty to the third respondent/ insurer to have the same recovered from the second respondent/owner of the vehicle thereafter .

The appeal stands disposed of as above.

**P.R. RAMACHANDRA MENON,
JUDGE**

**K. HARILAL,
JUDGE**

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