

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

M.A.C.A.No. 878 of 2015 ()

AGAINST THE AWARD IN O.P.(MV) NO. 1218/2010 of M.A.C.T., PALAKKAD DATED 26-06-2014

APPELLANT/3RD RESPONDENT:

NEW INDIA ASSURANCE COMPANY LTD.,
M.G. ROAD, MUMBAI- 400 001, REPRESENTED BY THE MANAGER,
REGIONAL OFFICE, KOCHI.

BY ADV. SRI. RAJAN P. KALIYATH

RESPONDENT(S)/PETITIONER & R1 & R2:

1. PREJEESH, AGED 6 YEARS,
(MINOR), S/O. RAMESHKUMAR, REP. BY RAMESH KUMAR,
AGED 44 YEARS, S/O. SAROJINI, MANI NIVAS,
THANNISSERY POST, KINASSERY VIA, PALAKKAD DISTRICT,
KERALA - PIN - 678 501.
2. SANTHOSH BABU, AGED 39 YEARS,
S/O. SUMATHI, SUMATHI NIVAS, CHINGAMPOTTA,
KOLLENGODE, PALAKKAD - PIN - 678 506.
3. RAJESH, AGED 35 YEARS,
S/O. PONNU, THAHARIYATHODU VEEDU, THANNISSERY,
PALAKKAD - PIN - 678 501.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-12-2015, ALONG WITH M.A.C.A NO.1062 OF 2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.T.O.

**P.R. RAMACHANDRA MENON
&
SHAJI P. CHALY, JJ.**

M.A.C.A. Nos.878 & 1062 of 2015

Dated this the 1st day of December, 2015

JUDGMENT

Shaji P. Chaly, J.

These appeals are preferred by the 3rd Respondent Insurance Company against the awards of the M.A.C.T., Palakkad in O.P.(MV) No.1218 of 2010 and O.P.(MV) No.1221 of 2010 dated 20.06.2014. Since the subject matter of the appeals has a common background, we propose to dispose of the same by a common judgment. 1st Respondent in these appeals are son and father respectively. 1st Respondent in M.A.C.A No.1062 of 2015 was removed from the party array by this Court vide the order dated 26.10.2015, consequent to an application filed by the appellant.

2. The 3rd Respondent Insurance Company has preferred these appeals mainly contending that even though the 2nd Respondent, rider of the offending motorcycle insured with the appellant was not having a valid driving licence, the Tribunal while awarding the amount, failed to protect right of

the Insurance Company to recover the same from Respondents 2 and 3.

3. Brief facts required for the disposal of the appeals are as follows:

4. Respondents No.1 in both the appeals were knocked down by the motorcycle bearing registration No.KL-09/P-640 ridden by the 2nd Respondent and owned by the 3rd Respondent at Thanisserry while walking along the edge of Palakkad-Koduvayur road at about 7 p.m. on 07.04.2010. They were injured in the accident and attribute the rashness and negligence of the motor cyclist. Thus, aggrieved by the accident occurred, they approached the Tribunal seeking reasonable compensation for the injury suffered by them. The Tribunal after evaluating the facts and circumstances and the law involved, has awarded a total sum of Rs.21,000/- and Rs.97,900/- in the respective petitions, with interest at the rate of 9% p.a. from the date of petition till realisation.

5. The appellant had raised a specific contention before the Tribunal that the rider of the offending motorcycle did not have a valid driving licence, which was clearly in violation of the policy conditions. In that background, the

appellant had filed an application seeking direction to the rider of the motorcycle to produce the licence, which was not complied with, in spite of the direction of the Tribunal. So also, the Police has registered a case against the rider under Sec.3(1) r/w Sec.181 of the Motor Vehicles Act for driving the motorcycle without a valid driving licence. Therefore, it is contended by the appellant that, even though an award was passed by the Tribunal directing it to deposit the amount awarded, it is entitled to seek recovery of the amount liable to be paid by it against the 2nd and 3rd Respondents the rider and insured of the motorcycle. It is in such circumstances contended that the awards of the Tribunal are bad and illegal.

6. When the matter was taken up before this Court, an opportunity was provided to the party Respondents to produce the licence but this was also not complied with. Therefore, the counsel for the appellant contended that in view of that matter, the appellant is entitled to get an order permitting it to recover the amount from the rider and the insured of the offending motorcycle. We find force in the said contention. Therefore, we are of the considered opinion that the Tribunal was not right in not protecting the interest of the appellant to

recover the amount from Respondents 2 and 3.

7. Even though we do not find any reason to interfere with the amount awarded by the Tribunal on various counts, we are of the considered opinion that the appellant is entitled to an order to recover the amount from the 2nd and 3rd Respondents, the driver and insured of the motorcycle. Accordingly, the appellant is permitted to seek recovery of the amounts awarded and deposited by it in O.P.(MV) Nos.1218 of 2010 and 1221 of 2010 of M.A.C.T., Palakkad.

The appeals are disposed of as above.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
01.12.2015