

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

MACA.No. 976 of 2015 ()

AGAINST THE AWARD IN OPMV 639/2011 of M.A.C.T.,KOTTAYAM DATED 05-02-2014

APPELLANTS:

1. MATHAI @ PAPPU,
EETTICKAL HOUSE, ARUVIKUAHI P.O., PALLIKKATHODE(DIED).

ADDITIONAL APPELLANTS

2. ALEY, D/O. MATHAI @ PAPPU, 318 LAKSHAM VEEDU KOLONY
PALLIKKATHODU, KOTTAYAM.
3. JOY MATHEW,
S/O. MATHAI @ PAPPU, 318 LAKSHAM VEEDU KOLONY
PALLIKKATHODU, KOTTAYAM
4. SUNNY MATHEW,
S/O. MATHAI @ PAPPU, 318 LAKSHAM VEEDU KOLONY
PALLIKKATHODU, KOTTAYAM

BY ADV. SRI.THOMAS K.C.KUNNATHOOR

RESPONDENTS:

1. SUBIN MATHEW,
THOTTAPPALLIL HOUSE, VELLOOR, PAMPADY- 686502.
2. PRAMOD,
VADAKLKEPURACKAL HOUSE, KALLADUMPOIKA BHAGAM
ANICKADU- 686503.
3. THE ORIENTAL INSURANCE CO. LTD,
KOTTAYAM- 686001.
4. V.J.MATHEW,
VADAKLKEPURACKAL HOUSE, KALLADUMPOIKA BHAGAM, ANICKADU
KOTTAYAM- 686503.

BY ADV.SMT.K.S.SANTHI FOR R3

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**

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M.A.C.A.No.976 of 2015

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Dated this the 1st day of June, 2015

JUDGMENT

Ravindran, J.

The appellants are the legal heirs of the claimant in O.P.(MV) No.639 of 2011 on the file of the Motor Accidents Claims Tribunal, Kottayam. By award passed on 05.02.2014, the Motor Accidents Claims Tribunal awarded the sum of ₹2,96,000/- as compensation to the claimant and allowed him to recover the said amount together with interest @ 8.5% per annum from the date of the petition and proportionate costs from the first respondent and his assets. The third respondent insurer was exonerated from liability.

2. In this appeal, the appellants challenge the exoneration of the third respondent from liability and also seek enhancement of the compensation awarded. When the appeal came up for admission today, learned counsel for the appellants submitted that the appellants are really aggrieved by the exoneration of the insurer from liability and that they do not seriously dispute the quantum of compensation awarded by the Motor Accidents Claims Tribunal.

3. It is evident from the materials on record that the insurer was exonerated from liability for the reason that the second respondent herein who was driving the motor vehicle involved in the accident did not possess a valid driving license. It has also come out in evidence that the second respondent was a minor on the date of the accident and was incompetent to hold a license. No exception can therefore be taken to the finding in the impugned award that the third respondent has no liability to pay the compensation awarded by the Tribunal.

4. The Apex Court has in **National Insurance Co.Ltd.v. Swaran Singh** (2004(3) SCC 297) held that the owner of the motor vehicle in terms of section 5 of the Motor Vehicles Act, 1988 has the responsibility to see that no vehicle is driven by a person who does not satisfy the provisions of section 3 or 4 of the Act. It was held that in a case where the driver of the vehicle admittedly did not hold a valid license and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in his defence and avoid liability.

In such circumstances, as the second respondent who was driving the motor vehicle involved in the accident was a minor on the date of the accident and he was ineligible to hold a driving license, we are of the opinion that no liability can be fastened on the insurer. The appeal fails and it is accordingly dismissed.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj