

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

MACA.No. 1163 of 2007 ()

AGAINST THE AWARD IN OPMV 41/2000 of MACT, IRINJALAKUDA
DATED 22-03-2006

APPELLANT/6TH RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LTD.,
REP. BY THE DEPUTY MANAGER, REGIONAL OFFICE, M.G.ROAD
KOCHI-11.

BY ADV. SMT.RAJI T.BHASKAR

RESPONDENTS/PETITIONERS 1 TO 5 & RESPONDENTS 1 TO 5:

1. IRANIMOSE, AGED ABOUT 70 YEARS,
S/O ITTIMATHU, CHAKOLA HOUSE, SOUTH BAZAR
IRINJALKUDA.

2. ROSY IRANIMOSE, AGED 59 YEARS,
W/O IRANIMOSE, -DO-

3. JOSE C.I., AGED 38 YEARS,
S/O IRANIMOSE, -DO-

4. LALY JOHNY, AGED ABOUT 40 YEARS,
D/O IRANIMOSE AND W/O JOHNY, POTTAKKARAN HOUSE
KARUVANNUR P.O.

5. LIJI JOSE, AGED ABOUT 35 YEARS,
D/O IRANIMOSE AND W/O JOSE C.L., CHUKKIRIYAN HOUSE
PERAMBRA.

6. MRS. NALINI VASUDEVAN,
W/O T.K.VASUDEVAN, XX/93, CHALAKUDY
THARAYIL HOUSE, KODAPUZHA, CHALAKUDY.

7. MANOJ N.R., AGED ABOUT 34 YEARS,
S/O RAGHAVAN, NJATTUVETTY HOUSE, PERIYARAM VILLAGE
CHALAKUDY.

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

9. SHAJI K.R., THADATHIL HOUSE,
PERAMANGALAM, THRISSUR.

10. ANTONY K.J., S/O JOSE,
KANNAMPILLY HOUSE, CHANDAKUNNU, IRINJALKUDA.

R8 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1163 OF 2007

Dated this the 8th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The short question that arises in the appeal is whether the liability could have been fastened on the appellant Insurance Company since what is involved is only an 'Act Only Policy'.

2. The deceased was a pillion rider of the motor cycle bearing Reg.No. KL 8/H 7550. When he reached at Pullur, the motor cycle collided with a jeep bearing Reg.No.KL-8/L 6570. Before the Tribunal, the claimants had impleaded the drivers of both the vehicles and the respective Insurance Companies. As far as the 8th respondent herein is concerned, no liability is fastened on the said company. Even though notice is served on respondents 1 to 5, 6, 8 and 10 and notice has been effected by paper publication as against respondents 7 and 9, there is no appearance for any of the said respondents.

3. We heard the learned counsel for the appellant and the learned counsel for the 8th respondent. The 9th respondent herein is the owner of the

motor cycle who was impleaded as fourth respondent before the Tribunal.

4. The Tribunal below has awarded a total compensation of ₹ 116449/-. It appears that there was no appeal by the claimants also.

5. The only question is whether the appellant could be fastened with the liability. The learned counsel for the appellant submitted that going by the schedule of premium, towards liability to public risk ₹77 has been paid and for third party property damage risk ₹58/- has been paid. Evidently, the deceased was a pillion rider of the vehicle. It is not a case of package policy also. As there is no payment of premium for the pillion rider, evidently the appellant cannot be fastened with the liability to pay the compensation.

Accordingly, the appeal is allowed and in modification of the award passed by the Tribunal. The operative portion of the award will stand modified and the award amount will have to be paid by respondents 9 and 10, who are found jointly and severally liable. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

sv.

P.V.ASHA, JUDGE