

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

MACA.No. 624 of 2011 ()

**AGAINST THE AWARD IN OP(MV) 930/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THRISSUR DATED 30-12-2010**
APPELLANTS/PETITIONERS:

- 1. SINI,W/O.LATE BENNY, INCHIKALAYIL HOUSE
P.O.KULAYATTIKKARA, ARYANKAVU, ERNAKULAM DISTRICT
NOW RESIDING WITH C/O.T.C.JOSE, AVITTATHOOR HEALTH CENTRE
AVITTATHOOR P.O., THRISSUR DISTRICT**
- 2. MINOR ALINA BENNY, S/O.LATE BENNY,
INCHIKALAYIL HOUSE, P.O.KULAYATTIKKARA, ARYANKAVU
ERNAKULAM DISTRICT, NOW RESIDING WITH C/O.T.C.JOSE
AVITTATHOOR HEALTH CENTRE, AVITTATHOOR P.O.
THRISSUR DISTRICT**
- 3. MINOR JOSEPH BENNY,
S/O.LATE BENNY, INCHIKALAYIL HOUSE, P.O.KULAYATTIKKARA
ARYANKAVU, ERNAKULAM DISTRICT, NOW RESIDING WITH C/O.T.C.JOSE
AVITTATHOOR HEALTH CENTRE, AVITTATHOOR P.O.
THRISSUR DISTRICT**
- 4. ANNAMMA,W/O.JOSEPH, INCHIKALAYIL HOUSE
P.O.KULAYATTIKKARA, ARYANKAVU, ERNAKULAM DISTRICT
NOW RESIDING WITH C/O.T.C.JOSE, AVITTATHOOR HEALTH CENTRE
AVITTATHOOR P.O., THRISSUR DISTRICT**

BY ADV. SRI.V.BINOY RAM

RESPONDENTS/RESPONDENTS:

- 1. THE GENERAL MANAGER,
KUTTUKKARAN ENGINE REBUILDERS, KUTTUKARAN CENTRE
MAMANGALAM, KOCHI, PALARIVATTOM P.O. 682 017**

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**2. THE DIVISIONAL OFFICER,
M/S.ORIENTAL INSURANCE CO.LTD, DIVISIONAL OFFICE
THRISSUR P.O. 680 001.**

**R1 BY ADVS. SRI.GEORGE THOMAS (MEVADA)(SR.)
SRI.MANU GEORGE KURUVILLA
R2 BY ADV. SRI.A.R.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.624 of 2011

Dated this the 21st day of July, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This is an appeal preferred by the claimants in O.P. (M.V.) 930/2004 on the file of the Motor Accidents Claims Tribunal, Thrissur. The said claim petition is under Section 163(A) of M.V. Act. The said application was dismissed. Aggrieved by the said dismissal, this appeal preferred.

2. The facts are as follows:

On 28.12.2003 at about 7 p.m., deceased Benny was riding a motorcycle bearing registration No. KL-7/R 5723 which hit against an electric post and Benny sustained fatal injuries and succumbed to the injuries. The appellants are the legal heirs of the deceased Benny.

3. The Tribunal after considering the matter found that the first respondent was the owner of the motorcycle and the first respondent got a case that the said vehicle was transferred by him on 28.11.2002 in favour of one Rajesh

and the said Rajesh transferred the vehicle to one Rajeevan. It is found by the Tribunal that the claimants have not impleaded the actual owner of the vehicle as on the date of the accident. Tribunal also considered the dictum laid in the decision reported in **United India Insurance Co. Ltd. v. Vijayarajan [2009 (3) KLT 269]** and dismissed the application.

4. When the appeal came up for hearing, the counsel for the appellants submitted before us that an opportunity may be given to implead the actual owner of the vehicle in the proceedings, for which I.A.No.1407/2011 is filed before this court.

5. The learned counsel appearing for the Insurance Company submitted before us that here is a case where the accident occurred solely due to the negligence of the deceased and no other vehicle is involved. It is the submission that there will not be no tortuous liability for any other person as he himself invited the accident. Under such circumstances even a remand is not warranted.

6. The ambit of Section 163(A) is now under the consideration of a Constitution Bench. Considering the submission of the appellants that impleading of the real owner is necessary as well as the fact that the legal issue is under consideration of the Constitution Bench of the Supreme Court, we feel that it will be only just and proper to remand the matter to the Tribunal to enable the appellants to implead the real owner. It is made clear that after remand, the appellants can file a petition before the Tribunal to implead necessary parties and the impugned order is hereby set aside and the Tribunal shall dispose of the matter in accordance with law.

There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

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