

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

MACA.No. 1014 of 2013 ()

AGAINST THE AWARD IN OPMV 2346/2005 of M.A.C.T., PERUMBAVOOR DATED 29-
03-2011
APPELLANT(S)/RESPONDENTS 1 AND 2:

1. T.J ABRAHAM, AGED 65 YRS
THENIAPLACKAL HOUSE, AANICADU P.O, KOTTAYAM

2. JOSEPH, AGED 43 YEARS
S/O MATHEW, KUNNEL HOUSE, MAVADIKKARA
UDUMPANCHOLA, IDUKKI

BY ADV. SRI.SOORAJ T.ELENJICKAL

RESPONDENT(S)/PETITIONER & 3RD RESPONDENT:

1. PHOENIX, AGED 25 YEARS
S/O ELIZABATH, KOLLAMPARAMBIL HOUSE, ALUVA KARA
ALUVA 683101

2. M/S NATIONAL INSURANCE COMPANY LTD,
BRANCH OFFICE, CSI SQUARE, BACKER HILLS
KOTTAYAM 686001

R2 BY ADV. SMT.DEEPA GEORGE
BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MACA NO. 1014 OF 2013

APPENDIX

ANNEXURE I : TRUE NOTARIZED COPY OF THE DRIVING LICENCE NO.
783/87/IV OF 2ND APPELLANT

ANENXURE II : TRUE NOTARIZED COPY OF RENEWED DRIVING LICENCE
ISSUED IN CARD FORMAT TO THE 2ND APPELLANT.

ANNEXURE III ; THE DRIVING LICENSE PARTICULARS OF THE 2ND
APPELLANT ISSUED FROM TEHS UB REGIONAL TRANSPORT
OFFICER, VANDIPERIYAR, DATED 10.05.2013

ANNEXURE IV : THE TRUE COPY OF THE COMMUNICATION NO. L 971/2015
DATED 16.07.2015 ISSUED TO THE 1ST APPELLANT FROM
THE OFFICE of the SUB REGIONAL TRANSPORT OFFFIVER,
VANDIPERIYAR

ANNEXURE V : THE DRIVING LICENSE PARTICULARS DATED 09.07.2015
ISSUED BY THE SUB REGIONAL TRANSPORT OFFICER,
VANDIPERIYAR.

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.A.C.A. No. 1014 of 2013

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Dated, this the 17th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The injuries sustained by the claimant in a Road Traffic Accident occurred on 13.07.2015, involving a motor cycle bearing No. KL7 AE 3886 ridden by the claimant/first respondent and a bus bearing No. KL 5/P 5826 owned by first appellant, driven by the second appellant and insured with the 2nd respondent, led to the claim petition filed under Section 166 of the M.V. Act as O.P. (M.V.) No. 2346 of 2005. The appellants 1 and 2 chose to remain exparte before the Tribunal. Evidence adduced from the part of the claimant consists of oral evidence of PW1 and PW2 and documents marked as Exts. A1 to A13. Nobody was examined from the part respondents, but for marking a copy of the policy as Ext. B1. The Tribunal arrived at a finding that the accident occurred was due to the rash and negligent driving by the driver of the bus and awarded a total compensation of Rs.6,37,890/- with interest @ 8% p.a. from the date of filing the

application. A contention was taken by the Insurance Company to the effect that the driver of the bus was not having any valid licence or badge at the time of the accident. Despite allowing the I.A., the driving licence was never produced and hence adverse inference was drawn, conferring right upon the Insurance company to have the claim amount realized from the respondent 1 and 2 therein (appellants herein), after satisfying the amount to the claimant, in view of violation of statutory conditions and policy conditions. This is sought to be challenged by the appellants, being the owner and driver of the bus, raising various contentions.

2. In the course of further proceedings, the learned counsel for the appellants submits that the driver of the bus was having driving licence and badge at the time of the accident and that the relevant proceedings could not be produced before the Tribunal, when the matter was finalized leading to the impugned Award. Copies of the relevant documents have been produced before this Court along with I.A. No. 1505 of 2013 as Annexures I to III. Objection was raised from the part of the Insurance company that some of the documents were only photocopies and as such the same cannot be relied on. Subsequently, the appellant sought to produce Annexure IV along with I.A. No. 2614 of 2015, which is a

communication issued by the Joint RTO bearing No. L-971/2015 dated 16.07.2015, whereby it is certified that the second appellant was having valid driving licence at the time of the accident. The matter was further sought to be substantiated by producing Annxure V driving licence particulars dated 09.07.2015 issued by the Sub Regional Transport Officer, Vandiperiyar by filing I.A. No. 2826 of 2015, which reveals that the driver of the bus was having valid driving licence and badge at the relevant time. In the said circumstances, an interim order was passed on 03.09.2015, so as to enable the Insurance Company to verify the factual particulars as to whether the version of the appellant could be acted upon. The said order reads as follows :

"The learned counsel for the Insurance Company seeks for short time to verify the factual position with regard to the possession of valid driving licence and badge of the driver of the concerned vehicle, which is sought to be established by the appellants by filing Annexures IV and V along with I.A. Nos. 2614 and 2826 of 2015.

List the matter for further consideration on 17.09.2015."

When the matter is taken up for further consideration today, the learned counsel for the Insurance Company submits that the factual

particulars were got verified and it has now been revealed that the driver of the bus was having valid driving licence and badge on the date of accident.

3. In the above facts and circumstances, this Court finds that the 'right of recovery' conferred upon the Insurance Company by the Tribunal is liable to be modified. Accordingly, we modify the relevant portion of the Award, whereby it has been held that the driver of the bus was not having valid licence and badge at the relevant time and as such there is violation of statutory/policy conditions, which in turn conferred the right to Insurance Company to proceed with further steps. It is made clear that Award amount is required to be satisfied by the Insurance Company in view of the existence of valid policy and the right of recovery from the appellants stands set aside.

The appeal is allowed to the said extent.

sd/-

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

sd/-

**K. HARILAL,
JUDGE**

kmd