

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

MACA.No. 1376 of 2015 ()

AGAINST THE AWARD IN OPMV 318/2006 of ADDL.D.C.& MACT, PATHANAMTHITTA
DATED 21.08.2014

APPELLANT(S)/2ND RESPONDENT:

M/S.ICICI LOMBARD GENERAL INSURANCE CO. LTD.
KANNANKERI ESTATE, 3RD FLOOR, SHANMUGHAM ROAD
MARINE DRIVE, ERNAKULAM, PIN-670 001
REPRESENTED BY ITS MANAGER LEGAL.

BY ADV. SRI.R.AJITH KUMAR (128/84)

RESPONDENT(S)/CLAIMANTS & 1ST RESPONDENT:

1. RAJESHKUMAR R., AGED 24 YEARS
S/O.K.T.RAJAPPAN, MALIYEKKAL POIKAYIL, ERAVIPEROOR
ERAVIPEROOR VILLAGE
PIN-689 542.(SON OF THE DECEASED)

2. THANKACHAN, AGED 50 YEARS
S/O.K.K.THEVAN, KADAMPATTIL, KAIPUZHA, KULANADA
KULANADA VILLAGE, PIN-689 503.

3. AMMINI RAJAPPAN
MALIYEKKAL, ERAVIPEROOR, THIRUVALLA
PIN-689 542.

R1 BY ADV. SRI.A.N.SANTHOSH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.A.C.A. No. 1376 of 2015

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Dated, this the 15th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The Award passed by the Tribunal is sought to be challenged by the appellant Insurance Company, raising a plea that the accident was a self made one and that there was no coverage under policy. The issue as on date is stated as covered by the verdict passed by the Apex Court in **2011 (4) KLT 821 (SC) [National Insurance Com. Ltd. Vs. Sinitha]**.

2. The claim petition was filed by the legal representative/minor son of the deceased Rajappan, who sustained fatal injuries in a road traffic accident occurred on 14.02.2006 at 12 noon and succumbed to the said injuries. The claim was resisted by the Insurance Company/appellant contending that since the deceased being a tort feaser, the claimant/legal representative of the deceased was not entitled for the compensation. No oral evidence was adduced before the Tribunal, but for marking Exts. A1 to A7

documents from the part of the claimant and Ext. B1 policy from the side of the Insurance Company/appellant. After conclusion of the Trial, the Tribunal arrived at a finding that the deceased was entitled to get third party benefit and fixed the same accordingly, awarding a total compensation of Rs.3,29,500/- with interest 9 % p.a. from the date of filing original petition i.e. from 20.03.2006 till realization, and proportionate cost of Rs.21,042.50, which is sought to be challenged by the appellant.

3. Sri. A. N. Santhosh enters appearance on behalf of the first respondent. 125 days' delay in filing the appeal was condoned after completion of service of notice to the respondents 2 and 3 through special messenger. In fact, they did not appear and paid only scant regards to the process of this Court.

4. It is brought to the notice of this Court that the law declared by the Apex Court in **2011 (4) KLT 821 (SC)** [cited supra] has been doubted and referred to Larger Bench vide the decision reported in **2013 (4) KLT 448 [United India Insurance Company Ltd. Vs. Ramani]**. But merely for the reason that the decision rendered earlier on the point has been doubted and referred by a co-ordinate Bench will not act as an interim stay of

the dictum already laid down in **2011 (4) KLT 821 (SC)** [cited supra]. The law declared by the Apex Court will stand intact till it is set aside and is having the binding force as the 'law of the land' by virtue of Article 141 of the Constitution of India.

4. In the above circumstances, this Court finds that the verdict passed by the Tribunal is liable to be intercepted. We order the same accordingly, making it clear that the liability cannot be shifted to the shoulders of the Insurance Company. Insurance company stands exonerated and the appeal stands allowed to the said extent.

sd/-

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

sd/-

**K. HARILAL,
JUDGE**

kmd

/True copy/

P.A. to Judge

M.A.C.A. No. 1376 of 2015

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