IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

MACA.No. 116 of 2009 ( )

AGAINST THE AWARD IN OPMV 1583/2003 of ADDL.M.A.C.T., KOTTAYAM
DATED 29-04-2008

APPELLANT(S)/2ND RESPONDENT:

UNITED INDIA INSURANCE CO.LTD.
DIVISIONAL OFFICE KOTTAYAM, REPRESENTED BY THE
DEPUTY MANAGER, UNITED INDIA INSURANCE CO.LTD.
OFFICE OF THE REGIONAL MANAGER, HOSPITAL ROAD,
ERNAKULAM.

BY ADV. SRI.M.A.GEORGE

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1 & 2:
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1. SARASWATHY, W/O.LATE GOVINDA RAJU,
THAMARASSERY HOUSE, MARIATHURUTHU KARA,
AYMANAM VILLAGE, KOTTAYAM.

2. N.NADESAN, S/O.ULANDAN NADAR,
THAMARASSERY HOUSE, MARIATHURUTHU KARA,
AYMANAM VILLAGE, KOTTAYAM.

3. THANKUBHAI, W/O.N.NADESAN,
THAMARASSERY HOUSE, MARIATHURUTHU KARA,
AYMANAM VILLAGE, KOTTAYAM.

4. RAJU T.K. SIVAKRIPA, MARIATHURUTHU P.O.
AYMANAM, KOTTAYAM.

R1 TO 3 BY ADV. SRI.K.A.HASHIM
R4 BY ADV. SRI.V.P.MOHAMMED NIYAZ

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

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M.A.C.A.No.116 of 2009

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Dated this the 30th day of September, 2015.

JUDGMENT

Ramachandra Menon, J.

The appeal has been preferred by the Insurance Company challenging the Award dated 29.4.2008 passed by the Motor Accidents Claims Tribunal, Kottayam in O.P(MV) No.1583/2003, whereby a total sum of Rs.3,93,500/- has been awarded as payable in respect of the death of a person, i.e., the husband of the 1st respondent herein and the son of the respondents 2 and 3, in a road traffic accident.

2. The factual position revealed from the proceedings is that, on 13.10.2002 the deceased was riding a motor cycle bearing No.KL-5/M-6629, which belonged to the 4th respondent. While proceeding so, he lost control over the vehicle and it hit against a heap of granite and overturned causing serious injuries. The injured succumbed to the injuries which

led to the claim petition filed before the Tribunal under Section 163A of the Motor Vehicles Act claiming a total compensation of Rs.6,40,000/-. The Insurance Company resisted the claim contending that it was a case of self accident and that there was no liability for the Insurance Company to meet the risk under the policy issued in respect of the vehicle. It was also contended that the deceased did not have valid driving licence to drive the vehicle at the relevant time. The age, occupation and such other factual particulars were also sought to be disputed. The claimants did not choose to adduce any oral evidence, but for producing Exts.A1 to A6 which are the police records. Ext.B1 is a copy of the policy certificate. The owner of the vehicle mounted the box to give evidence as R.W.1. The Tribunal proceeded to hold that the accident admittedly occurred when the deceased was using the vehicle bearing No.KL-5/M-6629 and as such, he was entitled to have compensation under Section 163A of the M.V. Act. Reckoning the notional income as Rs.3,000/- and adopting the multiplier of '16', 1/3rd was deducted towards personal expenses, and a sum of Rs.3,84,000/- was awarded towards compensation for loss of dependency. Granting an amount of Rs.2,000/- towards funeral expense, Rs.5,000/- towards loss of consortium to the 1st respondent and Rs.2,500/- towards loss of estate, the total compensation was worked out as Rs.3,93,500/- which was directed to be satisfied by the Insurance Company with interest @ 7% per annum. This, in turn, is sought to be challenged by the Insurance Company by filing this appeal.

3. Heard the learned counsel for the appellant as well as the learned counsel appearing for the claimants.

4. The learned counsel for the appellant submits that it is a case of self accident and as such, there is no statutory liability, whether it be under Section 166 or 163A of the M.V. Act, and as such, no liability could have been fixed upon the Insurance Company. Reliance is sought to be placed on the decision rendered by the Supreme Court in National Insurance Co. Ltd. v. Sinitha [2011 (4) KLT 821 (SC)] which was followed and explained

by a Full Bench of this Court as well in Oriental Insurance Co. Ltd. v. Joseph [2012 (2) KLT 132 (FB)] (to which I was also a member). The learned counsel for the respondents/claimants, on the other hand, submits that the decision rendered by the Supreme Court in Sinitha's case (supra) was subsequently doubted by another Bench and the same was referred to a larger Bench as per ruling reported in United India Insurance Co. Ltd. v. Sunil Kumar [2013 (4) KLT 488 (SC)]. But, the fact remains that as on date the law stands the one as declared by the Supreme Court in Sinitha's case (supra), relying on which the decision cited supra was rendered by the Full Bench of this Court as well. Merely for the reason that the judgment passed by the Supreme Court has been doubted by another coordinate Bench, it will not operate as a stay order in so far as the earlier judgment is concerned.

5. The learned counsel appearing for the Insurance Company also points out that this is a case where the deceased was riding the vehicle without a driving licence and that the same contributed much for

the accident. The learned counsel for the claimants submits that the deceased was actually having driving licence; but the particulars were not known to the claimants and the licence was lost pursuant to the accident occurred on 13.10.2002. We do not find it as acceptable. However, it is not necessary to deal with this issue, as the matter can be decided based on the verdict passed by the Supreme Court in Sinitha's case (supra).

6. In the above circumstance, we find that the Award passed by the Tribunal, having been invited by the deceased himself, is not liable to be compensated by the Insurance Company under the policy. It is declared accordingly and the Award stands set aside. The Insurance Company is set at liberty to withdraw the amount deposited pursuant to the interim order passed by this Court while granting interim stay, if any such deposit has been made. However, we reserve the right and liberty for the respondents/claimants to move this Court by filing appropriate proceedings, if the law gets changed by virtue of the reference

ordered vide United India Insurance Co. Ltd. v. Sunil Kumar [2013 (4) KLT 488 (SC)].

The appeal stands allowed.

Sd/-
P.R. RAMACHANDRA MENON, JUDGE

Sd/-
K. HARILAL, JUDGE

okb.