

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

MACA.No. 444 of 2014 ()

AGAINST THE AWARD IN OPMV 320/1998 of M.A.C.T., NEYYATTINKARA DATED
04-06-2002

APPELLANT/1ST RESPONDENT:

BABURAJ

CHEMMANKALA KAMALAVILASOM, NADOORKOLLA, KOLLAYIL
CHAIKOTTUKONAM P.O., NEYYATTINKARA
REPRESENTED BY THE POWER OF ATTORNEY HOLDER LEELA
D/O.RAJAMMA, AGED 37 YEARS, ONAMKODU
CHAIKOTTUKONAM P.O., THIRUVANANTHAPURAM.

BY ADVS.SRI.R.T.PRADEEP

SRI.P.BIJIMON

RESPONDENTS/APPLICANTS & 2ND AND 3RD RESPONDENTS:

1. VALSA GEORGE

W/O.LATE GEORGE NADAR, RENI COTTAGE, NADOORKOLLA
KOLLAYIL, AMARAVILA P.O.
NEYYATTINKARA-695121. (R1 DELETED FROM THE ARRAY OF PARTIES
AT THE RISK OF THE APPELLANT
VIDE ORDER DATED 06/03/2014 IN IA
746/2014 IN MACA 444/2014)

2. SAM GEORGE

S/O.LATE GEORGE, RESIDING AT -DO-
-DO-. (R2 DELETED FROM THE ARRAY OF PARTIES
AT THE RISK OF THE APPELLANT
VIDE ORDER DATED 06/03/2014 IN IA
746/2014 IN MACA 444/2014)

3. RENI GEORGE

S/O.LATE GEORGE
RESIDING AT -DO- -DO-. (R3 DELETED FROM THE ARRAY OF PARTIES
AT THE RISK OF THE APPELLANT
VIDE ORDER DATED 06/03/2014 IN IA
746/2014 IN MACA 444/2014)

4. ANIL KUMAR @ MONY
PANANGOTTUKONAM PUTHENVEEDU, NADOORKOLLA, KOLLAYIL
AMARAVILA P.O., NEYYATTINKARA.695121

5. THE MANAGER
NEW INDIA ASSURANCE COMPANY LTD.
SREE HARI BUILDINGS, NEAR BUST STAND JUNCTION
MAIN ROAD, NEYYATTINKARA, 695121.

R4 BY ADV. SRI.S.RAJEEV
R4 BY ADV. SRI.K.K.DHEERENDRAKRISHNAN
R5 BY ADV. SRI.KKM.SHERIF
R5 BY ADV. SRI.LAL K.JOSEPH
R5 BY ADV. SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.444 of 2014

Dated this the 10th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This is an appeal filed by the first respondent before the Tribunal, mainly aggrieved by the reservation given in the award of the Tribunal in favour of the insurer, giving liberty to realise the award amount from the first respondent/appellant herein, after payment to the claimants.

2. The accident and other factors are not under dispute. The appellant was arrayed before the Tribunal as registered owner of the vehicle involved in the accident, viz. an autorickshaw bearing Reg. No.KL-01-C 7630. The deceased was riding his motor cycle bearing Reg. NO.KL.01-D 511 through Thiruvananthapuram - Nagercoil N.H. road from west to east direction. The allegation is that the autorickshaw which was being driven by the second respondent before the Tribunal, hit the motor cycle causing the deceased to fall on the

road. He died on the same day in the Medical College Hospital. The quantum of compensation awarded by the Tribunal is Rs.5,12,994/- with interest at 9% per annum from 22.4.1998.

3. The case pleaded by the appellant is that from the award it is seen the appellant remained ex-parte before the Tribunal, even though vakalath was filed. His case is that he had entrusted the case to a lawyer and gave instructions to him, but he failed to defend the case after filing vakalath, and no written statement was filed. The case now pleaded before this Court is that the autorickshaw of which he was the registered owner, was sold to the fourth respondent as per sale note dated 20.12.1997 and he was driving it also. Actually, the fourth respondent in this case filed written statement denying the accident and he contended that he never drove the autorickshaw at the time of accident. According to him, the deceased was knocked down by another vehicle driven by some other person. He denied the ownership of the autorickshaw. The Tribunal found negligence as against the fourth respondent herein who was the second respondent before the Tribunal.

4. In support of the pleas raised by the appellant, he has produced various documents along with I.A. No.456/2014. Annexure I is the copy of the sale note dated 20.12.1997 by which he is alleged to have sold the vehicle to the fourth respondent. Annexure II is the copy of the kychit executed by the fourth respondent when he took interim custody of the vehicle from Police Station in Crime NO.463/1997. Annexure III is the copy of the final report in Crime NO.463/1997. Annexure IV is the copy of the judgment in C.C. No.534/1998 by the Judicial First Class Magistrate Court - II Neyyattinkara and Annexure V is the copy of the letter issued by the appellant to the insurer.

5. Actually, according to the case of the appellant, only when revenue recovery proceedings were initiated against him, he came to know about the award and thereafter he filed this appeal. While condoning the delay in filing the appeal this Court directed the appellant to pay an amount of Rs.20,000/- as cost to the insurance company which was paid and thereafter another sum of Rs.25,000/- has been deposited before this Court.

6. Learned counsel for the appellant submitted that the fact that

he is not the owner, will clearly absolve him from liability to satisfy the claims of the insurance company. Learned counsel also submitted that the insurance company ought to have proved that the absence of the licence for the driver had really caused the accident and therefore, since there is a total failure on the part of the insurance company to prove the same, the Tribunal went wrong in allowing the insurance company to recover the amount from the owner.

7. Learned counsel for the insurance company submitted that no such contention was raised before the Tribunal by the respective parties. It is also submitted that there is a finding by the Tribunal that the licence was not produced in spite of direction.

8. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has produced a copy of the licence before this Court. We have perused the licence, but it will show that on the date of accident he had no licence because the date of issue of the said licence is 18.3.1998.

9. The question is therefore whether the appellant could be absolved from liability. Learned counsel for the appellant pleaded for

a fresh opportunity for the appellant to adduce evidence before the Tribunal. Even though the same is opposed by the learned counsel for the insurance company, for a just decision of the case, we are of the view that the appellant can be given a chance to raise his pleas before the Tribunal.

10. Therefore, we allow the appeal and remand the matter for fresh consideration by the Tribunal only as regards the ownership of the vehicle at the time of the accident. Regarding the quantum of compensation and other benefits granted to the claimants, we confirm the same. The portion of the award making the appellant liable to satisfy the award, is set aside and the appellant is permitted to file a written statement. The insurance company and the fourth respondent are also given opportunity to raise additional pleadings, if required, and thereafter the Tribunal will proceed with the matter afresh. The amount of Rs.25,000/- deposited by the appellant for filing this appeal, will be returned by the Tribunal.

The Registry is directed to return the original documents, if any, produced by the appellant before this Court in IA No.456/2014 as per

rules. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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