

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

MACA.No. 61 of 2010 ()

AGAINST THE AWARD IN OPMV 1099/2002 of M.A.C.A, THRISSUR DATED 30-09-2009.

APPELLANT/4TH RESPONDENT:

UNITED INDIA INSURANCE CO. LTD.,
THRISSUR NOW REPRESENTED BY ITS DEPUTY MANAGER
REGIONAL OFFICE, "SHARANYA", HOSPITAL ROAD
KOCHI-11.

BY ADVS. SRI. MATHEWS JACOB (SR.)
SRI. P. JACOB MATHEW

RESPONDENTS/RESPONDENTS 1 TO 3:

1. THE DEPUTY DIRECTOR (TPI)
HEALTH AND FAMILY WELFARE SERVICE
THIRUVANANTHAPURAM.
2. KERALA STATE REPRESENTED BY THE
DISTRICT COLLECTOR, THRISSUR.
3. ASHARAF.E., S/O. IBRAHIMKUTTY,
KUZHIKKADAVIL HOUSE, VELIYATHUNADU, 161
BHARATHI, UC COLLEGE P.O., ALUVA-2.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

'CR'

**P.R. RAMACHANDRA MENON
&
SHAJI P. CHALY, JJ.**

M.A.C.A.No.61 of 2010

Dated this the 1st day of December, 2015

JUDGMENT

Ramachandra Menon, J.

This appeal arises from the award dated 30.09.2009 passed by the Motor Accidents Claims Tribunal, Thrissur in O.P.(MV) No.1099 of 2002 whereby the appellant/Insurance Company was directed to satisfy a sum of Rs.5,18,300/- with interest at the rate of 8% per annum from the date of filing the petition in respect of the loss resulted because of the demise of a person who was travelling in the ambulance bearing Reg. No.KL-01/N 1153 insured by the appellant.

2. The sequence of events as revealed from the proceedings is as follows:

3. The deceased in the instant case, a person aged 33 years, was accompanying a dead body in the ambulance bearing No.KL-01/N 1153 which belongs to the State and was

insured by the appellant. Despite the fact that the ambulance was having the capacity to accommodate only three persons as against the 3 seats, as many as 11 persons were travelling in the ambulance at the relevant time. While so, when the ambulance reached the place of occurrence on 3.12.2001, it hit against a tree standing on the side of the road, allegedly because of the negligence on the part of the driver of the vehicle, as a result of which, fatal injuries were caused to the deceased, apart from the injuries caused to other passengers.

4. As a matter of fact, the injuries sustained to the deceased were sought to be compensated by filing a claim petition by the injured himself before the MACT, Thrissur. Subsequently, the position got worsened, leading to the demise of the injured/original applicant, pursuant to which the additional claimants came to be impleaded in the party array. After analysing the facts and figures, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the ambulance. With reference to the pleadings and evidence on record, a total compensation of Rs.5,18,300/- was awarded by the Tribunal, which was directed to be satisfied with interest at the rate of 8% per annum. The grievance of the

appellant/insurance company is that, no recovery right has been awarded by the Tribunal in favour of the appellant/insurer, despite the established fact as to the violation of the statutory/policy conditions, so far as more number of persons were being carried in the vehicle, contrary to the permit conditions.

5. The evidence adduced before the Tribunal consists of the oral testimony of Pws.1 to 3 and documents produced as A1 to A11 on the part of the claimants. The respondents produced B1 to B4, though nobody was examined from their side. On conclusion of the trial, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver of the ambulance as mentioned already. The specific pleading raised by the appellant/insurance company as to the violation of policy/statutory/permit conditions carrying more persons than the permitted capacity has been taken note of in paragraph 17. Referring to the contents of the final report submitted by the Police (Ext.B4), it is observed that more number of persons than the permitted seating capacity of '3' were in the ambulance at the time of accident. But observing that only a single person had come before the Tribunal seeking

for compensation, the liability was held to be fastened on the shoulders of the insurance company, to indemnify the owner of the vehicle.

6. The learned Senior Counsel appearing for the appellant/insurance company submits that said proposition and finding is wrong as the other injured persons (as many as 6) had also filed claim petitions before the MACT, Perumbavoor as O.P. (MV) Nos. 558/2002, 975/2002, 1051/2002, 897/2002, 2313/2001 and 362/2002. Similar contentions were raised on the part of the appellant/insurance company in those cases as well. After evaluating the facts and figures, compensation was awarded by the Tribunal in all those cases. The amounts awarded by the Tribunal in the above O.P.(MV)s are in the following terms :

“O.P.(MV) No. 558/2002 : Rs.9,83,910/-

O.P.(MV) No.975/2002 : Rs.61,385/-

O.P.(MV) No.897/2002 : Rs.94,735/-

O.P.(MV) No.1051/2002 : Rs.3,58,390

O.P.(MV) No.2313/2001 : Rs.2,00,900/-

O.P.(MV) No.362/2002 : Rs.2,24,867/-”

Accepting the contentions raised by the appellant/insurance company that there was violation of statutory/policy/permit

conditions, though the appellant was directed to satisfy the claim amount, right of recovery was granted in favour of the insurance company. In spite of producing a copy of the said verdict before the MACAT, Thrissur as Ext.A4 absolutely, no reference was made in this regard and no right of recovery was ever granted in favour of the appellant.

7. The question whether the insurance company can avoid the liability, if more number of persons than the permitted capacity are carried in the vehicle had come up for consideration before the Apex Court and the question was answered declaring the law as per the decision in **National Insurance Co. Ltd. v. Anjana Shyam** [2007(3) KLT 993(SC)]. Carrying more number of persons than the permitted capacity by itself cannot be a ground for the insurance company to disown the liability. However, the Apex Court made it clear that, if more number of persons are carried in the vehicle than the permitted capacity, the liability of the insurance company stands confined to the permitted seating capacity. To quantify the actual amount payable by the insurance company under such circumstances, the Apex Court made it clear that, among the awards passed by the Tribunal the maximum amount carried by such number of

cases in relation to the permitted seating capacity shall be satisfied and the total figure in this regard shall be pooled among the persons concerned based on the proportion/ratio fixed by the Tribunal. Subsequently, the Apex Court held in **United India Insurance Co. Ltd. v. Poonam** [2011(1) KLT S.N.108 (C.No.152) SC] reiterating the above proposition after making a reference to the said decision and also held that more persons in excess of the permitted seating capacity carried in the vehicle would be in violation of the conditions of the policy and as such, it is open for the insurance company to have the amount recovered from the owner after satisfying the awards, except in respect of the highest award amounts payable in relation to the maximum seating capacity.

8. Coming back to the case in hand, the learned counsel for the appellant company submits that the seating capacity of the ambulance was only '3' and the amount awarded in the instant case (Rs.5,18,300/- with interest) happened to the second highest among the total number of cases filed both before the MACAT, Thrissur and MACT, Perumbavoor. The particulars of the award amount granted in the other 6 cases have already been extracted herein before. It is stated that the

appellant/insurance company has already satisfied the entire amounts in all the above 6 cases, which have decided by the MACT, Perumbavoor and the total figure already deposited in the above 6 cases comes to more than the total of the highest 3 cases which alone could be the maximum extent of liability to be satisfied by the appellant/insurer in view of the law declared by the Supreme Court. This being the position, the appellant may be given the right of recovery after satisfying the award amount in favour of the claimants and hence the appeal.

9. It is stated that no relief is claimed against the claimants. There is no dispute with regard to the quantum of award nor as to the negligence. It is in the said circumstances that the claimants have not been impleaded in the appeal confining the relief only to have the right for recovery. After hearing, this Court finds that there is considerable force in the submission made by the learned Senior counsel across the Bar more so in view of the law declared by the Apex Court as per the decisions mentioned above. Since the insurance company has already satisfied the amounts more than the amount payable in respect of 3 higher award cases, the appellant is entitled to get the right of recovery from the owner of the vehicle that is the 1st and 2nd

respondents herein.

10. The award passed by the Tribunal will stand modified to the above extent, making it clear that, once the liability in O.P. (MV) No.1099 of 2002 of the MACT, Thrissur is satisfied, it is open for the appellant to have the same recovered from respondents 1 and 2 by way of appropriate proceedings in accordance with law.

The appeal stands allowed to the said extent.

Sd/-

P.R. RAMACHANDRA MENON
JUDGE

Sd/-

SHAJI P. CHALY
JUDGE

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P.A. To Judge

smv
01.12.2015