IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

MACA.No. 527 of 2009 ( )

AGAINST THE AWARD IN OPMV 1954/2002 of M.A.C.T.,KOZHIKODE DATED 10.8.2007

APPELLANT/PETITIONERS:
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1. T.K.RUKHIYABI, AGED 37 YEARS
WIFE OF P.K. ABDUL JALEEL, NAJA, FEROKE COLLEGE POST
KOZHIKODE.

2. REJA ,MSSHUDA, AGED 18 YEARS,
P.K. ABDUL JALEE, NAJA, FEROKE COLLEGE POST
KOZHIKODE.

BY ADVS.SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENTS/RESPONDENTS:
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1. P.K.ABDUL JALEEL, AGED 45 YEARS.
S/O. MOHAMMED, NAJA, FEROKE COLLEGE POST,
KOZHIKODE.

2. THE UNITED INDIA INSURANCE CO LTD.,
DIVISIONAL OFFICE, 2ND FLOOR, SEEMA TOWERS
BANK ROAD, MAVOOR ROAD JUNCTION, KOZHIKODE.

R2 BY ADV. SRI.P.SANKARANKUTTY NAIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.
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M.A.C.A. No.527 of 2009
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Dated this the 17th day of July, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in O.P.(MV).No.1954 of 2002 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode. They instituted O.P.(MV).No.1954 of 2002 claiming the sum of ₹3,00,000/- as compensation consequent on the death of Naja Binthu Jaleel aged 12 years, the daughter of the first claimant and sister of the second claimant. The first respondent in the claim petition and the instant appeal is the husband of the first claimant and the father of the victim. The victim of the accident died instantaneously when the car driven by the father/first respondent overturned. The first respondent, the owner of the motor car in which the victim was travelling, filed a written statement contending that the car overturned when he attempted to save a cyclist who had suddenly crossed the road. The insurer filed a written statement admitting the insurance policy. But it contended that as the victim was travelling in the car, she cannot be treated as a third party and therefore, it is not liable to indemnify the insured.

2. Before the Motor Accidents Claims Tribunal no oral evidence was adduced on either side. On the side of the claimants Ext.A1 FIR, Ext.A2 scene mahazar, Ext.A3 series of medical bills, Ext.A4 birth

certificate and Ext.A5 Family Membership certificate were produced. On the side of the insurer, Ext.B1 final report laid by the police was produced. A copy of the policy was however not produced before the Tribunal. The Motor Accidents Claims Tribunal has considered the rival contentions and held that the insured himself had caused the accident. The Tribunal dismissed the claim petition on the ground that as the victim was travelling in the car and the risk of passengers travelling in the car is not covered by the policy, the insurer is not liable to indemnify the insured. Hence this appeal.

3. After the instant appeal was filed, on noticing the fact that the insurer had admitted insurance coverage of the motor vehicle, a Division Bench of this court by order passed on 13.02.2015 directed the insurer to file an affidavit and to produce a copy of the policy issued by it in respect of the motor vehicle involved in the accident. The insurer accordingly produced a copy of the policy along with I.A.No.1354 of 2015. The affidavit dated 25.3.3015 which was filed in support of the said application however did not contain a statement as to whether gratuitous passengers are covered by the policy. Thereupon, by order passed on 9.4.2015 this court directed the insurer to clarify whether gratuitous passengers are covered by the policy. Accordingly an affidavit dated 21.5.2015 was filed along with I.A.No.1689 of 2015, wherein in paragraph 3 it is averred as follows:

> "3. It is submitted that as per the terms and conditions of

> the Policy issued for Vehicle No.KL-11-6-4321, the passengers in the car are covered under the Policy."

4. In the light of the aforesaid development we are of the opinion that the Motor Accidents Claims Tribunal should dispose of the claim petition afresh after accepting the copy of the insurance policy into evidence and after affording both sides an opportunity to adduce evidence in support of their respective contentions.

We accordingly allow the appeal, set aside the impugned award and remand O.P.(MV).No.1954 of 2002 to the Motor accidents Claims Tribunal, Kozhikode for fresh trial and disposal. The parties shall appear before the Motor Accidents Claims Tribunal on 10th August, 2015. The Motor Accidents Claims Tribunal shall try and dispose of the claim petition expeditiously and in any event within an outer limit of two months from that date. The second respondent insurer shall on 10.8.2015 produce along with an affidavit, a copy of the policy of insurance issued by it in respect of the motor vehicle involved in the accident and in force at the relevant time. No costs.

P.N.RAVINDRAN
JUDGE

ANU SIVARAMAN
JUDGE

kp/-