

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

MACA.No. 2658 of 2015 ()

AGAINST THE AWARD IN OPMV 496/2013 of THE MACT, WYANAD, KALPETTA
DATED 15-11-2014

APPELLANT/2ND RESPONDENT:

SHINOBH A.K. AGED 40 YEARS
KIZHAKKEPARAMBATH HOUSE, ERUVATTY P.O, THALASSERY
KANNUR DISTRICT.

BY ADVS.SRI.P.P.RAMACHANDRAN
SRI.P.RAHUL

RESPONDENTS/PETITIONER AND RESPONDENTS 1 AND 3:

1. VIJAYAN @ VIJAYAKUMAR
AGED 49 YEARS, S/O.NARAYANAN, VACHALIL HOUSE
PAYYAMPALLY P.O, KOILERY, OORPPALLY
MANANTHAVADY.
2. SUBITH
AGED 29 YEARS, S/O.VASU, KOYYALKUNNATH HOUSE
ERUVATTY P.O ERUVATTY, THALASSERY, KANNUR DISTRICT.
3. RELIANCE GENERAL INSURANCE CO. LTD.(KANNUR BRANCH)
XL/3599, 4TH FLOOR, ELIZABATH ALEXANDER MEM,
SHANMUGHAN ROAD, MARINE DRIVE, COCHIN - 682 031.

R3 BY ADV. SRI.GEORGE CHERIAN (SR.)
R3 BY ADV. SMT.K.S.SANTHI
R3 BY ADV. SMT.LATHA SUSAN CHERIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

MACA.No. 2658 of 2015

APPENDIX

APPELLANT'S ANNEXURES

ANNESURE A: TRUE COPY OF THE DEMAND NOTICE RECEIVED BY THE
APPELLANT.

ANNEXURE B: TRUE COPY OF THE DRIVING LICENCE OF THE 2ND
RESPONDENT DRIVER.

RESPONDENTS' ANNEXURES: NIL.

TRUE COPY

P.A. TO JUDGE.

Kp/-

P.R. RAMACHANDRA MENON & P. BHAVADASAN, JJ.

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M.A.C.A.No.2658 of 2015

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Dated this the 30th day of November, 2015

JUDGMENT

RAMACHANDRA MENON, J.

This appeal has been preferred by the owner of the vehicle bearing registration No.KL-13W-1311, being aggrieved of the award passed by the Motor Accidents Claims Tribunal, Waynad, Kalpetta in O.P.(MV)No.496 of 2013, fixing the liability upon the shoulders of the appellant/owner.

2. The accident occurred was on 27.9.2013, when there occurred a collision between the lorry bearing No. KL-13W-1311 owned by the appellant, driven by the second respondent and insured by the third respondent and a motor cycle bearing No. KL-12H-7003, causing injuries to the claimant. In the claim petition filed before the Tribunal, a contention was taken by the Insurance Company, that there was no valid driving licence to the driver and hence there was no liability to the insurer. The evidence adduced before the Tribunal consists of Exts.A1 to A8. No oral evidence was adduced from either side.

3. On completion of trial, the Tribunal arrived at a finding

that the accident was solely because of the negligence on the part of the driver of the lorry and proceeded to fix the liability accordingly. The Tribunal observed that despite the specific plea taken by the Insurance Company and steps taken in this regard, the driving licence of the driver was never produced. I.A. No. 2694 of 2014 was filed to cause production of the driving licence, which did not turn to be fruitful and the licence was never produced. It was accordingly that a finding was rendered by the Tribunal that the first respondent before the Tribunal did not have driving licence at the time of occurrence. Amounts were awarded by the Tribunal under different heads, granting a total sum of ₹28,425/- which was directed to be satisfied with interest at the rate of 9% per annum from the date of the petition. The liability was mulcted upon the shoulders of the respondents concerned, directing the Insurance Company to satisfy the same to the claimant, with liberty to have the same recovered from the other respondents. This made the appellant/owner of the vehicle to approach this Court by filing this appeal.

4. Along with the appeal, the appellant has produced a

copy of the driving licence of the driver as Annexure B. The learned counsel for the appellant submits that the appellant had entrusted the matter with another lawyer to defend the proceedings. But it was only under unfortunate circumstance that the actual facts and particulars could not be brought to the notice of the Tribunal. This necessitated filing of the appeal along with a copy of the driving licence, which clearly reveals that the licence was issued on 11.01.2008; there was valid authorisation to drive a transport vehicle through out and there was no break in licence. It is stated that the accident occurred was only on 27.09.2013 and as such, the finding of the Tribunal, fixing the liability upon the appellant/owner of the vehicle is liable to be interfered, submits the learned counsel.

5. Heard the learned counsel appearing for the Insurance Company as well.

6. It remains a fact that the copy of the driving licence was produced as Annexure B along with the appeal dated 12.8.2015. The matter was initially posted before Bench as an unnumbered item, because of the objection raised by the Registry. It was

considered by this Court and an order was passed on 18.8.2015 directing the Registry to assign number to the proceedings. It was thereafter that notice was ordered in the C.M. Application to condone the delay on 25.9.2015. The delay was condoned on 19.11.2015. The matter came up for further consideration on 24.11.2015 and despite the above postings, no serious objection is filed; particularly from the side of the 3rd respondent Insurance Company, to hold that Annexure B driving licence produced by the appellant is not genuine.

7. After hearing both the sides and after going through the contents of the said licence, we find that the driver of the lorry was having valid driving licence and authorisation to drive the transport vehicle on the relevant date i.e., on 27.9.2013 when the accident was occurred. In the said circumstance, the right of recovery reserved in favour of the Insurance Company stands set aside. The award is modified accordingly, making it clear that entire liability has to be discharged by the Insurance Company. The amount deposited by the appellant/owner of the vehicle by way of statutory deposit under Section 172 (2) of the Motor

Vehicles Act, 1988 shall be released to the appellant on production of a copy of this judgment.

Appeal stands allowed. No costs.

**P.R. RAMACHANDRA MENON
JUDGE**

**P. BHAVADASAN
JUDGE**

kp/-