

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 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936`

MACA.No. 1812 of 2014 ()

AGAINST THE AWARD IN OPMV 569/2007 of M.A.C.T. TIRUR DATED
28-03-2009

APPELLANT/2ND RESPONDENT:-:

MOOSA,
ALUNGAL HOUSE, PERUMPARAMBA P.O., EDAPPAL VIA.
MALAPPURAM DISTRICT.

BY ADV. SRI.A.KRISHNAN

RESPONDENTS/CLAIMANTS 1 & 2 AND RESPONDENTS 1 AND 3 IN O.P.
(M.V.): -:

1. MOHAMMED MUSTAFA,
S/O.HASSAN, PALAKKATHODY HOUSE, PONMUNDAM AMSAM DESAM
PONMUNDAM P.O. - 676 106.

2. JAMEELA,
W/O.MOHAMMED MUSTAFA, PALAKKATHODY HOUSE
PONMUNDAM AMSAM DESAM, PONMUNDAM P.O. - 676 106.

3. HUSSAIN,
S/O.KASIM, CHOLAKATH HOUSE, P.O.ADRISSERI
CHETTIANKINAR, TIRUR TALUK - 676 101.

4. NEW INDIA ASSURANCE COMPANY LTD.,
BRANCH OFFICE, TIRUR - 676 101.

R4 BY ADV. SRI.PMM.NAJEEB KHAN
R3 BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A.No.1812 OF 2014

Dated this the 3rd day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant herein was the second respondent before the Tribunal below. The short question that arises herein is as to whether the finding by the Tribunal that absence of permit will enable the Insurance Company to recover the amount from the appellant is correct or not.

2. We heard the learned counsel for the appellant and the learned counsel for the Insurance Company.

3. Going by the discussion in paragraph 10 of the award to which our attention was invited by the learned counsel for the Insurance Company, two aspects have been considered by the Tribunal. The first one is regarding absence of badge and the second one is regarding absence of permit. It is seen that even though the Insurance Company filed I.A.No.1236/2008 and I.A.No.1237/2008 to cause

production of the permit and the badge, they were not produced. The award was accordingly passed by the Tribunal.

4. The appellant remained ex parte before the Tribunal. The learned counsel for the appellant submits that he has got a very good case in the matter. According to him, the first issue whether badge is required or not is covered by the Full Bench decision of this Court in **National Insurance Co. Ltd. v. Jisha (2015(1) KLT 1(F.B.)** in favour of the appellant and as far as the requirement of permit is concerned, the learned counsel submitted that herein the vehicle involved is a goods autorickshaw which will be covered by the provision under Section 66(3)(i). Section 66(3)(i) provides that the provisions of sub-section (1) shall not apply to any goods vehicle; the gross vehicle weight of which does not exceed 3000 kilograms.

5. The learned counsel submits, based on the copy of the registration certificate that the gross vehicle weight is 890 kg and therefore the permit is not required. The above document has not been produced as evidence either before the Tribunal or this Court. Learned counsel sought for an opportunity to produce the relevant documents.

Therefore it requires a remand of the matter to the Tribunal for considering the said question. Accordingly, we remand the matter for considering the limited question of liability fastened on the appellant. In all other respects, the award will stand confirmed and it is submitted by the learned counsel for the Insurance Company that the award has been satisfied also.

The appellant will appear before the Tribunal and will file the written statement detailing his contentions and produce documents also. Parties are allowed to adduce evidence. Appropriate decision will be taken by the Tribunal in accordance with law. Till the award is passed, the interim order passed by this Court staying recovery as against the appellant will continue. The appellant and the Insurance Company will appear before the Tribunal on 26.02.2015 and the Tribunal will proceed with the matter in accordance with law. No Costs.

T.R.RAMACHANDRAN NAIR, JUDGE

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P.V.ASHA, JUDGE