IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

MACA.No. 265 of 2008 ( )

AGAINST THE AWARD IN OPMV 553/2001 of MACT ALAPPUZHA DATED 27-07-2006

APPELLANT/2ND RESPONDENT:

UNITED INDIA INSURANCE COMPANY LIMITED
ALAPPUZHA NOW REPRESENTED BY ITS DEPUTY MANAGER
REGIONAL OFFICE, "SHARANYA", HOSPITAL ROAD
KOCHI-11.

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

RESPONDENTS/PETITIONERS AND IST RESPONDENT:
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1. JOHN, S/O JOSEPH, KULANGARA
PUNNAPRA P.O., ALAPPUZHA DISTRICT.

2. GRACY, D/O.JOHN, DO. DO.

3. ROSELY @ SAINU, D/O.JOHN, DO. DO.

4. IDA @ ASHA, D/O.JOHN, DO. DO.

5. SEBASTIAN, S/O.JOHN, DO. DO.

6. SAIRAS @ BOSS, S/O.JOHN, DO. DO.

7. JOSEPH @ KOCHUMON, S/O.JOHN, DO. DO.

8. JOY, S/O. JOHN, DO. DO.

9. SALAS, S/O.ANTONY, ARACKAL HOUSE,
THUMPOLY WARD, ALLEPPEY.

(NO RELIEFS ARE CLAIMED AGAINST RESPONDENTS 3 TO 5 IN THE ORIGINAL PETITION AND HENCE THEY ARE NOT MADE PARTIES IN THIS APPEAL).

R1 TO 8 BY ADV. SRI.V.P.MOHAMMED NIYAZ

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 29-06-2015, ALONG WITH MACA. 270/2008, MACA. 271/2008, OPMAC. 2838/2013, OPMAC. 2840/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.

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M.A.C.A.Nos.265, 270, 271 OF 2008 &
O.P.(MAC)NOs.2838, 2840 OF 2013

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Dated this the 29th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

All these matters arise from a common award passed by the Tribunal in O.P.Nos. 553/2001, 688/2001, 689/2001, 695/2001 and 694/2001 respectively. Since a common question arises for consideration, we dispose of the cases together.

2. We heard the learned Senior Counsel for the Insurance Company Sri.Mathews Jacob and the learned counsel appearing for the claimants in each case Sri.V.P.Mohammed Niyas.

3. In this case the accident occurred on 5.12.2000 . The petitioners in O.P.(MV)No.688/2001, 689/2001, 694/2001, 695/2001 and deceased Thressiamma were travelling in an autorickshaw bearing Reg.No.KL-4-H/5204 from Alappuzha beach to Uppootty bridge. Near the office of the F.C.I., Muppalam, the autorickshaw hit on the left side

of the bus bearing Reg.No.KL-4/F/738 driven by the third respondent. All the claimants and the deceased were thrown off to the road and sustained injuries. Thressiamma died on 12.12.2000.

4. In this case, we are not called upon to consider the legality of the award of compensation and the findings regarding negligence. At the outset, the learned Senior Counsel for the appellant submitted that the Company disputes its liability and the said question alone will have to be considered. It is submitted that the Insurance Company disputes the liability on the ground that it was a goods autorickshaw and even though the finding is that the deceased as well as the claimants were accompanying the goods namely fish carried in the autorickshaw, even then the learned Senior Counsel submits that the autorickshaw was not having any permit to carry people and nobody can be allowed to share the seat of the driver also. If that be so, it is not a case of violation of the condition of the policy, but absence of liability. The learned Senior Counsel relied upon the following decisions :

United India Insurance Co. Ltd. v. Suresh (2008(4) KLT 552 (SC)

M.V.Jayadevappa and another v. Oriental Fire & Genl. Ins.Co.Ltd. and others (2005 ACJ 1801)

United India Insurance Co. Ltd. v. Velayudhan (2006 (1) KLT SN 78, Case No.113)

5. The learned counsel for the respondents submits that in an identical case, a Division Bench of this Court in ***United India Insurance Company Ltd. v. Manoj and others (2011 (1) KHC 226 (DB)***, held that in respect of claim by owner of the goods travelling in a goods autorickshaw, he will be entitled for payment of compensation by the Insurance Company.

6. The Tribunal, after elaborately considering the contentions, entered into a finding that the applicants and the deceased were occupying the goods autorickshaw as owners of the goods and they were not merely gratuitous passengers and accordingly it was held that the company will be liable. The evidence including that of RW1 who

was examined on the side of the Insurance Company has been analysed. Ext.B1 is the copy of the Insurance policy. After considering the above contention also and in the light of the amended provision under Section 147 of the Act, it was held that the deceased and the claimants had taken fish from Alappuzha beach in aluminum vessels and they had hired an autorickshaw for going towards fish market for selling the same. In this context, Ext.A1 copy of the FIR was also considered.

7. We are only on the legal question raised herein. Therefore we proceed to consider the decisions relied upon by the learned counsel on both sides.

8. In ***United India Insurance Co. Ltd. v. Suresh (2008(4) KLT 552 (SC)***, the main point considered was whether a person who has hired a goods carriage will come within the purview of Section 147 (1) if goods as such were not carried in the vehicle at the time of accident.

9. Our attention was invited to paragraph 13 of the judgment

wherein it has been held that “if the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter in a three wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved.” Finally a direction was also given that the Insurance Company will pay the amount and realise the same from the owner.

10. In the next decision in ***M.V.Jayadevappa and another v. Oriental Fire & Genl. Ins.Co.Ltd. and others (2005 ACJ 1801)***, in a commercial vehicle passengers were travelling and in that dictum the Supreme Court held that the vehicle could not have carried passengers and the vehicle is a goods vehicle. The question whether the owner of the goods will get the coverage was not a point considered therein. The contention by the owner was that the vehicle was a passenger vehicle. Here the vehicle is a goods vehicle.

11. In ***United India Insurance Co. Ltd. v. Velayudhan (2006 (1) KLT SN 78, Case No.113)*** where also a gratuitous passenger in a goods vehicle was travelling and it was held that statutory liability will not be there.

12. In ***United India Insurance Company Ltd. v. Manoj and others (2011 (1) KHC 226 (DB)***, the Division Bench considered various aspects. It was held in paragraph 4 as follows :

> *"4. Section 147(1)(a)(i) of the Motor Vehicles Act deals with the liability of the insurer to pay compensation against any liability which may be incurred in respect of the death of or bodily injury to any person including the owner of the goods or his authorised representative carried in the vehicle. The above liability of the insurer in respect of any person, including the owner of the goods in a goods vehicle was incorporated in the Act, through an amendment in Act 54 of 1994 with effect from November 14, 1994. Though the appellant had contended that the claimant was not the owner of the goods, the Tribunal had repelled the above contention in the absence of any contra evidence*

adduced by the appellant."

13. Even though an argument was raised that there is no provision of seats in goods autorickshaw, it was held that the owner who accompanies his goods in the vehicle cannot be penalised if the owner or the driver of the vehicle accommodates him in the vehicle in violation of the policy conditions. The decision of the Supreme Court in **Suresh's case** (supra) was also considered.

14. We also understand the dictum in **Suresh's case** (supra) as that if the owner of the goods is sharing the seat of the driver, it will be a violation of the conditions of the policy.

15. The learned Senior Counsel for the appellant submitted that there will not be any permit for carrying passengers in a goods vehicle. Of course the permit will be to operate the vehicle as a goods vehicle itself. But in the light of the provision under Section 147 (1)(a)(i), the Insurance Company will have to issue a policy for covering the liability towards the owner of the goods or his representative . Therefore, in such circumstances we cannot absolve the Company by holding that the

permit has not been issued to carry anybody, since the Company will be statutorily liable. Hence in this case the Insurance Company will be liable to satisfy the award. But since there is violation of the policy conditions, we hold that the appellant will be entitled to recover the amount from the owner of the vehicle.

The appeals and the original petitions are accordingly disposed of. The parties will suffer their costs in the appeals and original petitions.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

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