IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

MACA.No. 3047 of 2015 ()

(AGAINST THE AWARD IN OPMV 1765/2004 of MACT, ATTINGAL DATED 31-10-2011)

APPELLANT/1ST RESPONDENT:

ADARSH
S/O.MURALEEDHARAN NAIR, AGED 30 YEARS,
RESIDENT OF THIRUVATHIRA PULLUVILA VEEDU, KURUMANDAL
PARAVOOR P.O, KOLLAM.

BY ADVS.SRI.R.NIKHIL
SMT.P.K.PAMALA
SRI.P.ABDUL RAZAK

RESPONDENTS/ RESPONDENTS 2 TO 4:

1. RAJESH
S/O.MADHUSOODHANAN, RESIDENT OF HOUSE NO.12
LEKSHAM VEEDU, PANATTUCHIRA, POOTHAKKULAM P.O
PARAVOOR, KOLLAM DISTRICT. 691 302.

2. SHIBU
S/O.SOMARAJAN, RESIDENT OF LEENA SADANAM
HARIHARAPURAM, NELLETTIL P.O, PARAVOOR
KOLLAM DISTRICT, 691 302.

3. THE NEW INDIA ASSURANCE COMAPNY LIMITED
BRANCH OFFICE, PLOT NO.1345/C2
NEAR MUNICIPAL BUS STAND, ATTINGAL
THIRUVANANTHAPURAM DISTRICT. 695 101.

R1&2 BY ADV. SRI.ARUN BABU
R3 BY ADV. SRI.KKM.SHERIF
R3 BY ADV. SRI.A.A.ZIYAD RAHMAN
R3 BY ADV. SRI.LAL K.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.
....

M.A.C.A.No.3047 OF 2015

....

Dated this the 22nd December, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

This appeal has been preferred by the (first respondent before the Tribunal) owner of the vehicle bearing No.KL.2/L.6098. The grievance is in respect of the right reserved in favour of the Insurance Company to recover the amount, after satisfying the liability to the claimant.

2. The factual position revealed is that there occurred an accident involving a stage carriage bearing No.KL.2/L.6098, which belonged to the appellant. The case put up by the claimant was that he was trying to board the vehicle and when he stepped on the first step of the footboard, the second respondent/conductor gave a signal/bell to move the bus and

immediately, the third respondent/driver took the vehicle forward, whereby the appellant came to be thrown out and sustained serious injuries in the accident. The matter was contested by the Insurance Company and a finding was rendered by the Tribunal, based on the evidence adduced, such as Exts.A1 to A10 that the accident was solely because of negligence on the part of the conductor and driver of the bus. A total compensation of Rs.35000/- was awarded with interest at the rate of 7.5% per annum. However, observing that there was no valid driving licence for the third respondent, the respondent Insurance Company was set at liberty to have the amount recovered from the appellant/owner of the vehicle, which made him feel aggrieved and hence the present appeal.

3. Heard the learned Counsel for the appellant and the learned Counsel for the Insurance Company. Along with the memorandum of appeal, the extract of particulars of the driving licence of the driver, as obtained from the Motor Vehicles

department is produced as Annexure-A1, which prima facie shows that the driver was having valid driving licence along with authorisation to drive the transport vehicle on the date of the accident. It was in the said circumstance, that the learned Counsel for the Insurance Company was required to ascertain the factual position as to Ext.A1, simultaneously ordering 'status quo' with regard to recovery proceedings, if any.

4. The specific case projected by the learned Counsel for the appellant is that he was never served with a notice from the Tribunal, by virtue of which, he was not aware of the proceedings before the Tribunal. Whether the appellant was served with notice or not is not discernible from the award. What is mentioned in the cause title of the award is that, the respondents 1-3 were represented by NIL; whereas the 4th respondent was represented by the concerned lawyer. It appears that an adverse inference was drawn as to the absence of driving licence, based on the contention raised by the Insurance Company. It is also

asserted by the learned Counsel for the appellant that there was no case for the police that any case was registered against the driver of the vehicle for not possessing valid driving licence in terms of Section 3(1) of the Motor Vehicles Act r/w. Section 181 and that the position is clear from the charge sheet produced before the Tribunal, copy of which was marked as Ext.A4. The learned Counsel for the Insurance Company fairly submits, based on the instructions received, that the factual position in respect of Annexure A1 was got verified which revealed that the third respondent before the Tribunal/driver was having valid driving licence to drive the transport vehicle/stage carriage on the relevant date.

5. In the above circumstance, we find that interference is necessary with regard to right of recovery granted by the Tribunal in favour of the Insurance Company. Accordingly, we set aside/ modify the impugned award passed by the Tribunal, whereby a finding has been rendered that the vehicle was being

driven on the relevant date without valid driving licence and in turn, reserving the right of recovery in favour of the Insurance Company. The said portion of the award stands intercepted . It is made clear that the liability has to be satisfied by the Insurance Company. The appeal stands allowed. No cost.

P.R. RAMACHANDRA MENON,
JUDGE

ANIL K. NARENDRAN,
JUDGE

lk