

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

MACA.No. 1628 of 2009 ()

AGAINST THE AWARD IN OPMV 1785/2002 of M.A.C.T., PERUMBAVOOR
DATED 03-11-2008

APPELLANT/(PETITIONER IN OP(MV) 1785/02):

JENI PAUL, S/O.POULOSE, AGED 37,
CHILLIRICKAL HOUSE, ALLAPRA KARA, VENGOLA
VILLAGE, AT PRESENT THE CLAIMANT IS UNSOUND,
SO REPRESENTED BY HIS WIFE AND NEXT FRIEND, MINI
AGED 32 YEARS, -DO-

BY ADVS.SRI.V.K.GOPALAKRISHNA PILLAI
SRI.GOPAKUMAR G. (ALUVA)

RESPONDENT(S)/(RESPONDENTS IN OP(MV) 1785/02):

1. RAJEEVAN, S/O.GOPALAN,
KUNNUPURATH HOUSE, KURIAN MALA EAST KADATHY
MARKET P.O., VELOORKUNNAM, MUVATTUPUZHA.

2. HONEY BABU, S/O.V.I.BABU,
VYSSIAMPARAMBIL (H), KADAMATTOM POST, KOLENCHERY.

3. NATIONAL INSURANCE CO.LTD.,
COCHIN DIVISIONAL OFFICE, AJOY VIHAR, FIRST FLOOR
M.G.ROAD, ERNAKULAM.

R,R3 BY ADV. SRI.P.JAYASANKAR
R,R1 BY ADV. SRI.AJEESH S.BRITE
R2 BY ADV. SRI. PAUL. K. VARGHESE (B/O) (NO MEMO)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 30-03-2015 ALONG WITH MACA.2444/2012, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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

**M.A.C.A Nos.1628 of 2009 and
2444 of 2012**

Dated this the 30th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

M.A.C.A No.2444/2012 is filed by the registered owner of the vehicle involved in the accident and M.A.C.A No.1628/2009 is filed by the claimant before the Tribunal.

2. We heard the learned counsel on both sides. The claimant filed the application after sustaining injuries in an accident which occurred on 05.03.2002. Going by the award the Tribunal has granted a total amount of Rs.3,32,100/- as compensation with interest also.

3. In M.A.C.A No.2444/2012, the main contention raised is that the appellant is not at all liable to meet the liability towards payment of quantum. The award is an exparte one passed against the appellant. The learned counsel for the appellant submitted that the real owner of the vehicle has not been impleaded by the claimant. It is also submitted that the appellant is facing revenue recovery proceedings at the hands of the Insurance Company. He had been working abroad from 17.10.2003 onwards. It is stated in ground B that the owner of

the vehicle was Sri Subramanian, S/o.Shankaran, Vellurkunnam, Muvattupuzha which is clear from Ext.P5 charge sheet. The above contention is also supplemented by producing Annexure-I, copy of the registration particulars.

4. As far as M.A.C.A No.1628/2009 is concerned, the claimant has raised various contentions for enhancing the quantum of compensation also.

5. In the light of the above scenario, the matter requires consideration by the Tribunal. The learned counsel for the claimant submitted that as far as the finding on negligence is concerned, no interference is called for. Apart from the same it is also submitted that the quantum of compensation awarded by the Tribunal has been deposited by the Insurance Company also. It is further requested that the inadequacy of the quantum raised by the appellant may be directed to be considered by the Tribunal. He also seeks for permission to file an application to amend the details in the claim petition for enhancing the quantum of compensation, which we permit.

Therefore we dispose of the appeals in the following manner:

O.P(MV) No.1785 of 2002 is remanded back to the Tribunal. The award passed by the Tribunal will be treated as provisional as regards the quantum and other aspects, and we confirm the finding on negligence as against the driver of the offending vehicle and the same need not be reopened. The appellant in M.A.C.A No.1628/09 is allowed to file an application to amend the claim petition, for impleading the real owner of the vehicle and also for seeking enhanced compensation. We permit the appellants in M.A.C.A No.2444/2012 and in M.A.C.A No.1628 of 2009 to adduce evidence in the matter and therefore the order making the appellant in M.A.C.A No.2444/2012 *exparte* is set aside. He is permitted to file written statement. Appropriate award will be passed after hearing both sides and all parties are allowed to adduce evidence in the matter.

Both sides will appear before the Tribunal on 11.05.2015.

Sd/-

T.R.RAMACHANDRAN NAIR

Judge

Sd/-

P.VASHA

Judge

rtr/

/true copy/

P.S to Judge