

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH**

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

MACA.No. 1647 of 2010 ()

AGAINST THE AWARD IN OPMV 2513/2004 of M.A.C.T.,KOZHIKODE DATED 19-10-2009

APPELLANT/3RD RESPONDENT:

**THE NEW INDIA ASSURANCE CO.LTD.,
TIRUR NOW REPRESENTED BY ITS DEPUTY MANAGER,
REGIONAL OFFICE, M.G.ROAD, KOCHI - 11.**

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

RESPONDENTS/PETITIONERS:

- 1. NEJMA, W/O.LATE H. ABDURAHIMAN,
HAJYARAKATH HOUSE, CHETTIPPADY POST, ALUNGAL BEACH
MALAPPURAM NOW RESIDING AT KOTTAKANDY HOUSE
CHALIYAM POST, KOZHIKODE - 673 301.**
- 2. RAJISHA MOL, (MINOR)
D/O.H ABDURAHIMAN, REPRESENTED BY HER MOTHER NEJMA,
DO..DO..**
- 3. MUHAMMED, HAJYARKATH HOUSE
CHETTIPPADY POST, ALUNGAL BEACH
MALAPPURAM NOW RESIDING AT KOTTAKANDY HOUSE
CHALIYAM POST, KOZHIKODE - 673 301.**
- 4. AYISHA BEEVI, W/O.MUHAMMED
DO..DO.**

**R1-R4 BY ADVS. SRI.K.M.FIROZ
SMT.M.SHAJNA**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
23-09-2015, ALONG WITH MACA. 1999/2010 & CONN. CASES, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

VPV

P.N.RAVINDRAN & BABU MATHEW P. JOSEPH, JJ.

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**M.A.C.A.Nos.1647, 1999, 2027, 2028,
2029, 2030, 2044, 2046, 2047, 2048,
2087, 2088, 2089, 2106, 2107, 2108, 2121,
2122, 2156, 2164, 2179, 2180 & 2404 of 2010**

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Dated this the 23rd day of September, 2015

JUDGMENT

P.N.Ravindran, J.

These appeals arise from the common award passed by the Motor Accidents Claims Tribunal, Kozhikode in O.P.(M.V.)Nos.2513 of 2004 and connected cases. The appellant is the third respondent therein. Eight out of the claim petitions were filed by the legal heirs of persons who had succumbed to the injuries sustained by them in the motor accident and rest of the cases were filed by the victims of the accident. The claimants contended that the deceased/victims of the accident were travelling in a stage carriage bus bearing registration No.KL-10/D-9779 and that it collided with a mini lorry bearing registration No.KL-10/H-3493 and in that accident eight of the victims died and the others sustained serious injuries. It was contended that the accident took place on account of the rash and negligent driving of the stage carriage bus by its driver, the second respondent.

2. The owner and the driver of the stage carriage bus did not enter appearance or file written statement, with the result, they were set exparte. The third respondent, the insurer of the stage carriage

bus entered appearance and filed a written statement wherein after admitting the insurance coverage of the stage carriage bus in some of the cases it was contended that the deceased/injured was travelling in the mini lorry as a gratuitous passenger along with other passengers, that they were not accompanying the goods or the cargo carried in the goods vehicle, that they were not travelling in their capacity as cleaner or headload worker and therefore, their claims are not tenable. It was contended that there has been a conscious attempt by the victims of the accident/legal heirs of the deceased victims to manipulate the facts and to make it appear that the deceased victims/injured persons were travelling in the stage carriage bus when, as a matter of fact, they were travelling in the mini lorry.

3. The Motor Accidents Claims Tribunal considered the rival contentions and held relying on Ext.A3 scene mahazar that the accident took place on account of the rash and negligent driving of the stage carriage bus. The Tribunal thereafter proceeded to award various amounts as compensation and directed the third respondent insurer to deposit the amounts awarded as compensation together with interest and costs. The third respondent insurer has, aggrieved thereby, filed these appeals.

4. We heard Sri.Mathews Jacob, learned Senior Advocate

appearing for the appellants and the learned counsel appearing for the respondents. Sri.Mathews Jacob, learned Senior Advocate appearing for the appellants contended, inviting our attention to Ext.A1 FIR and the copies of the inquest reports prepared shortly after the accident, that many among the claimants were travelling in the mini lorry, that in that accident eight persons including the driver of the mini lorry succumbed to the injuries sustained by them, that O.P.(M.V.) Nos.2513, 2514, 2515, 2516, 2517, 2518 and 2519 of 2004 were filed by the dependents of the passengers travelling in the mini lorry who had succumbed to the injuries sustained by them in the accident and therefore, the contention in the claim petitions filed by them that the deceased victims of the accident were passengers in the stage carriage bus is neither true nor tenable and therefore, the impugned awards are liable to be set aside. The learned Senior counsel contended that many among the claimants have fraudulently filed the claim petition describing themselves or their predecessor-in-interest as passengers of the stage carriage bus with a view to hide the fact that they were travelling as gratuitous passengers in the mini lorry.

5. Per contra, learned counsel appearing for the respondents contended that Ext.A3 scene mahazar establishes the fact that the stage carriage bus was on the wrong side of the road, that the

accident took place two meters to the west from the eastern tar end of the road and not two meters to the east from the western tar end of the road as stated by the Tribunal and that from the situs of the accident it is evident that it was the driver of the stage carriage bus who was rash and negligent and not the driver of the mini lorry. The learned counsel contended that the appellants have not adduced any evidence to show that the claimants/predecessors-in-interest of the claimants were passengers in the mini lorry, that the inquest reports which are now sought to be pressed into service were not produced before the trial court and have not been produced even in this court and therefore, the appellants cannot rely on the inquest reports to contend that many among the victims were passengers in the mini lorry. The learned counsel for the respondents also contended that as the accident took place on account of the rash and negligent driving of the stage carriage bus, it does not matter whether the claimants were travelling in the mini lorry or in the bus and that the arguments put forward by the appellant in the written statements filed by it are defences available only to the insurer of the mini lorry and not to the insurer of the stage carriage bus.

6. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through

the pleadings and the materials on record. Shorn of details, the contention raised by the learned Senior Advocate appearing for the appellants is that many among the claimants/predecessors-in-interest of the claimants were gratuitous passengers travelling in the mini lorry and therefore the appellant, the insurer of the stage carriage bus cannot be held liable to compensate them. Reliance is placed on the recitals in Ext.A1 F.I.R. and copies of the inquest reports which have not been produced before the Tribunal or even in this court. It is evident from a reading of the written statements filed by the insurer of the stage carriage bus that the plea which they have put forward therein is a plea which is available only to the insurer of the mini lorry. The insurer of the mini lorry is not the appellant. It is stated that National Insurance Company Limited was the insurer of the mini lorry. Such being the situation, as the Police records establish the fact that it was the driver of the stage carriage bus who was negligent, we are of the opinion that even assuming that some among the claimants/predecessors-in-interest of the claimants were travelling in the mini lorry, they are entitled to maintain a claim against the owner, driver and insurer of the stage carriage bus. It is not in dispute that seven among the persons who died in the accident are fishermen. The eighth person who died in the accident was the driver of the mini lorry. It was

certainly open to the driver of the mini lorry to maintain a claim against the owner, driver and insurer of the stage carriage bus. In such circumstances, as the evidence on record establishes the fact that it was the driver of the stage carriage bus who was negligent and it was open to the claimants including the passengers if any travelling in the mini lorry to maintain a claim against the owner, driver and insurer of the stage carriage bus, in the absence of any evidence on the side of the appellants to prove that there was rashness and negligence on the part of the driver of the mini lorry and therefore it is not liable to indemnify the insurer, we are of the opinion that no interference is called for with the impugned judgment. The Tribunal has on the materials available before it entered a finding that it was the driver of the stage carriage bus who was negligent. After going through the Police records and the evidence on record, we are not persuaded to disagree with the finding entered by the Tribunal. The Tribunal has on the materials before it entered a finding, which, in the light of the recitals in the scene mahazar, cannot be said to be perverse. We accordingly uphold the finding on negligence entered by the Motor Accidents Claims Tribunal. Though the appellants have also challenged the quantum of compensation awarded by the Tribunal, having regard to the amounts paid as compensation, we are not persuaded to hold

that the compensation awarded is exorbitant or excessive. We accordingly overrule the said contention as well.

For the reasons stated above, we hold that there is no merit in these appeals. The appeals fail and are accordingly dismissed with a direction to the appellants to satisfy the awards, if till date the awards have not been satisfied, within two months from today. No costs.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

/TRUE COPY/

P.A. TO JUDGE

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