

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

MACA.No. 2342 of 2014 ()

AGAINST THE AWARD IN OPMV 1259/2004 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
PATHANAMTHITTA DATED 20-03-2014

APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LIMITED,
ATTINGAL NOW REPRESENTED BY ITS MANAGER
REGIONAL OFFICE, M.G. ROAD, KOCHI-11.

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

RESPONDENTS/PETITIONER & RESPONDENT 1 & 2:

1. SOMAN,
S/O. PURUSHOTHAMAN, PODIVILAYIL HOUSE
ARUKALICKAL PADINJAREMURI, EZHAMKULAM P.O.
ADOOR TALUK, PIN-689 320.
2. RAMACHANDRAN NAIR. P.R.,
RAMANILAYAM, PALLIPURAM, KANIYAPURAM P.O.
THIRUVANANTHAPURAM DISTRICT, PIN-695505.
3. BHADRAN,
S/O. NARAYANAN, SHIBU VILASAM, PONGALADI
ULLOORKONAM, KILIMANOOR, THIRUVANANTHAPURAM DISTRICT
PIN-695501.

R3 BY ADV. SRI. K. SIJU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2342 OF 2014

DATED THIS THE 16th DAY OF NOVEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

This appeal has been filed by the insurer, being aggrieved of the award dated 20.3.2014 passed in O.P.(MV)No.1259/2004 of the Motor Accident Claims Tribunal, Pathanamthitta, mulcting the liability upon the shoulders of the appellant.

2. Accident occurred was on 19.5.2004, when an autorickshaw bearing No.KL-01-AC-2872 knocked down a pedestrian, i.e., the 1st respondent herein causing injuries which was sought to be compensated by filing the claim petition. The appellant, who was shown as the 3rd respondent, contended that the offending vehicle involved in the accident was insured with **M/s. National Insurance Co. Ltd., Thiruvananthapuram Branch bearing No.570203/31/033608369** for the period 5.1.2004 to 4.1.2005. The Tribunal, based on the evidence adduced as Annexures A1 to A13, fixed the negligence on the part of the concerned respondent and awarded a total compensation of ₹3,25,990/-, which was ordered to be satisfied with interest @ 9% from the date of the petition. Observing that the vehicle was validly insured with the appellant, it was sought to be

satisfied by the appellant, who in turn has approached this Court by filing this appeal stating that no policy was issued by the said insurer.

3. Since there was delay of 63 days in filing the appeal, urgent notice was ordered by speed post on 23.9.2014. Despite service of notice, respondents 1 and 2 did not choose to appear before this Court, whereas the 3rd respondent alone has filed a vakalath. Since respondent 1 and 2 did pay only scant regard to the process of this Court, it is not necessary to issue any fresh steps in respect of the said respondents, more so in view of the nature of contentions raised and the verdict proposed to be passed.

4. As mentioned above, the question to be considered is whether any valid policy was in existence and if so, who is to satisfy the liability in terms of the award. The specific case of the appellant is that the policy was actually issued by another Insurance Company, by name, **National Insurance Company** and not by the appellant herein. This specific fact pleaded in the written statement was unfortunately omitted to be noted and the Tribunal proceeded on a wrong impression that the policy was virtually admitted. This Court finds that the matter requires to be reconsidered by the Tribunal. If there is any valid Insurance Policy issued by National

Insurance Company, an opportunity is required to be given to the claimant to bring them in as a proper party.

In the said circumstances, the matter is remanded only to consider the above limited aspect, as to who is to satisfy the liability in terms of the award. The award passed by the Tribunal stands intercepted to the above limited extent. The proceedings as above shall be finalised at the earliest at any rate within a period of three months from the date of receipt of a copy of this judgment.

Appeal is disposed of.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn