

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

MACA.No. 1990 of 2010 ()

**AGAINST THE AWARD IN OP(MV) 891/2004 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL, NEYYATTINKARA DATED 15-03-2010
APPELLANTS/APPLICANTS:**

- 1. DHAS, S/O. NADANKANNU AND ROSAMMAL
PANAVILA VEEDU, PUTHUKADAI.P.O., NOW RESIDING AT
ROADARIKATHU VEEDU, VANYAKODU, PARASSALA.P.O.**
- 2. VILASINI, W/O. RAJAPPAN, POTTAIVILAI
HOUSE, PAINKULAM VILLAGE, PUTHUKADAI
PAINKULAM .P.O.**
- 3. SRI. N. BABY, W/O. ARULDAS,
PALICHAKULATHENKARI HOUSE, PAZHAYAKADAI
PALLIYADI.P.O.**
- 4. N.LEELA, W/O. BOOVAS, ATHIYANKOTTUVILAI
VEEDU, KANJIRODE, KANJIRODE.P.O.**

**BY ADVS.SRI.L.MOHANAN
SMT.LIGEY ANTONY**

RESPONDENTS/RESPONDENTS:

- 1. M.REGHU, S/O. MANIYAN
AZHAKARCOIL ROAD, MEOOR TALUK, MADHURAI DISTRICT
TAMIL NADU 629 172.**
- 2. JHONE PETER, S/O. CHINNAPPAN,
R.C. STREET, PAZHAYAKADA, PALLIYADI.P.O.
TAMIL NADU 629 169.**
- 3. NATIONAL INSURANCE CO. LTD.,
RESPONDENT BY ITS DIVISIONAL MANAGER
DIVISIONAL OFFICE, THIRUVANANTHAPURAM 03**

MACA.No. 1990 of 2010 ()

**4. LAZER, S/O. AMBROSE,
VARAVIALATHOPPU VEEDU, POOVAR DESOM, POOVAR.P.O.**

R3 BY ADV. SMT.RAJI T.BHASKAR

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.1990 of 2010

Dated this the 22nd day of July, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred against the dismissal of O.P. (M.V.)No.891/2004 on the file of the Motor Accidents Claims Tribunal, Neyyattinkara.

2. The facts are as follows:

Rosammal who was allegedly aged 50 years sustained fatal injuries in a motor vehicle accident occurred on 4.12.2003 at 10.30 a.m. It is the case of the appellants that a motorcycle bearing registration No.TDU-9926 came and knocked down her. She succumbed to the injuries on 14.12.2003 at Medical College Hospital, Thiruvananthapuram, while undergoing treatment.

3. The appellants are the children of the said deceased Rosammal. They arrayed the owner of the bike as respondent No.1 and rider of the bike as respondent No.2 and the Insurance Company as respondent No.3. The first respondent appeared and filed written statement contending that the said vehicle was actually sold and he is

not the actual owner of the vehicle at the time of accident. They provided the address of the transferee as one R. Kannan, residing at Door No.26A, Ramachandranpuram, South Gate, Madurai 625 001.

4. The Tribunal framed issues regarding “whether the O.P. bad for non-joinder of the transferee owner as contended by the first respondent” and after making a finding to the effect that non-impleadment of the said Kannan is fatal to the O.P., the claim petition dismissed. Aggrieved by the said dismissal order, this appeal preferred.

5. We heard the learned counsel for the appellants and respondents. Learned counsel for the appellants submitted before us that, without any material corroborating the contention of R1, the Tribunal dismissed the claim petition. The learned counsel appearing for the Insurance Company submitted before us that the rider of the vehicle was not having license. It is the further submission that, before taking steps in this regard, O.P.

dismissed.

6. After hearing the counsel, it is found that the dismissal of the original petition is bad in law in the light of the dictum laid down in **Baby Varghese v. Anitha Roy [2015 (3) KLT 78]**, where one of us (T.R. Ramachandran Nair J.) was also in the Bench. We feel that the dismissal of the claim petition is not proper.

We set aside the impugned order and remand back the matter to the Tribunal to dispose of the matter afresh in accordance with law giving opportunity to take steps to the appellants as well as the Insurance Company. We direct the Tribunal to dispose of the matter expeditiously within a period of six months after receiving the file and copy of this judgment.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/