

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 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

MACA.No. 2212 of 2010 ()

AGAINST THE AWARD IN OPMV 346/2005 of ADDL.M.A.C.T., THRISSUR DATED
27-02-2010

APPELLANT/2ND RESPONDENT:

NEW INDIA ASSURANCE CO. LTD.
PERINCHERY BUILDING, ROUND NORTH, THRISSUR.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS/CLAIMANTS & R1 & 2:

1. LAKSHMI AMMAL, AGED 62 YEARS
W/O. CHINNANMOOTHAN @ CHINNA GUPTHAN, KOTTAYIL
HOUSE POST KULAKKATTUKURRISSY, VIA KADAMBAZHIPPURAM
NEELAMANGALAM, OTTAPALAM TALUK, PALAKKAD DISTRICT.
PIN 679 101

2. SUBRAMANIAN AGED 40 YEARS,
S/O CHINNANMOOTHAN @ CHINNA GUPTHAN-DO-

3. AJITHA AGED 37 YEARS,
D/O. CHINNA MOOTHAN @ CHINNA GUPTHAN -DO-

4. RAJAN, AGED 34 YEARS,
S/O. CHINNA MOOTHAN @ CHINNA GUPTHAN -DO-

5. MAHIN, S/O. SUDHAN, PTHANANGADI HOUSE,
POST AYYANTHOLE, THRISSUR.

6. DHANESH, S/O. PURUSHOTHAMAN,
KALLARKANDI HOUSE, NEAR THIRUVANIKAVU TEMPLE
POST OLLUKKARA, THRISSUR DISTRICT.

R6 BY ADV. SRI.JIJO PAUL

R1 TO R4 BY ADV. SRI.T.C.SURESH MENON

R5 BY ADV. SRI.P.V.CHANDRA MOHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2212 OF 2010

Dated this the 8th day of July, 2015

JUDGMENT

Jyothindranath, J.

This is an appeal preferred by the Insurance Company, aggrieved by the award dated 27.02.2010 made in O.P.(MV)No.346/2005 on the file of the Motor Accidents Claims Tribunal, Thrissur. As per the impugned award, the Tribunal made liable the Insurance Company to pay the amount even though the Insurance Company got a specific contention that the driver at the relevant point of time was not having a valid driving licence.

2. When the appeal came up for hearing, the learned counsel for the appellant submitted before us that on 31.12.2004, a motor vehicle accident occurred, in which the claimant in the above claim petition sustained injuries and died on the next day, while he was undergoing treatment. Even though the vehicle was insured with the appellant herein, it is the case put forward by the Insurance Company

that a minor was driving the motor vehicle at the relevant point of time. It is also the specific case of the Insurance Company that the said minor was aged only 17 and not having a valid driving licence. The Tribunal did not consider the said contention and discarded the same by a short observation as follows :

“ The further contention of the third respondent that the second respondent was not having valid Driving Licence, is not established and therefore is discarded.”

3. It is also submitted before us that the Police charge, which was made available before us for perusal, shows that a petty case under Section 3(1) r/w Section 181 of Motor Vehicles Act has also been charged by the Police for not having a valid licence against the rider of the vehicle apart from the main offences under Section 279, 304(A) of IPC. It is also submitted before us that the application was filed before the Tribunal for a direction to produce the driving licence by the second respondent herein. No specific order was passed therein.

4. We heard the learned counsel for the respondents also.

5. After hearing the learned counsel on both sides, we feel that

the above mentioned and quoted finding of the Tribunal is to be set aside.

6. Thus, the impugned award is set aside to the extent of the finding regarding the contention of not having driving licence for the second respondent (driver). The award in respect of all other issues will stand confirmed.

7. The matter is remanded back to the Tribunal for a finding on the issue whether the driver was having valid driving licence. All legal issues relating to this aspect and its consequential orders if required are also left open for the consideration by the Tribunal. Appeal allowed to the extent specifically mentioned above.

Registry shall send back the records without delay. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.