IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

MACA.No. 2820 of 2014 ()

AGAINST THE AWARD IN OPMV 566/2007 of MACT, VADAKARA

APPELLANT(S)/RESPONDENT No.1 :-

M. ABDUL ROUF, S/O.MOHAMMAD,
FARSANA'S NEERCHAL, KANNUR - 670 003.

BY ADVS.SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA

RESPONDENT(S)/PETITIONERS & RESPONDENT No.2 & 3 :-

1. ARIYAYI, AGED 62 YEARS, W/O.SANKARAN,
PILAKKAT VAYALKUNI HOUSE, P.O.KATALOOR,
QUILANDY TALUK, KOZHIKODE DISTRICT.

2. SATHYAN, AGED 44 YEARS, S/O.SANKARAN,
PILAKKAT VAYALKUNI HOUSE, P.O.KATALOOR,
QUILANDY TALUK, KOZHIKODE DISTRICT.

3. SASI, AGED 41 YEARS, S/O.SANKARAN,
PILAKKAT VAYALKUNI HOUSE, P.O.KATALOOR,
QUILANDY TALUK, KOZHIKODE DISTRICT.

4. SUDHEER, AGED 36 YEARS, S/O.SURENDRAN,
MADANKARA HOUSE, KOTTALI P.O., NEAR TO KOTTALI KAVU,
KANNUR DISTRICT.

5. THE ORIENTAL INSURANCE CO.LTD. Do 3, CHENNAI,
No.7 UTHAMAR GANDHI SALAI, SECOND FLOOR,
ROSY TOWERS, NUNGABAKKAM, CHENNAI,
TAMIL NADU - 600 034.

R5 BY ADV. SRI.N.S.NAJEEB
BY ADV. SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MACA.No.2820 OF 2014

APPENDIX

Appellant's Exhibits :-

Annexure A :- True copy of the revenue recovery notice dated 18.6.2014.

Respondent's Exhibits :- NIL.

//True Copy//

P.A. to Judge

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

M.A.C.A. No.2820 of 2014

Dated this the 22nd day of January, 2015

J U D G M E N T

Ramachandran Nair, J.

This appeal is filed by the registered owner of the vehicle involved in an accident. As per the award, a total compensation of ₹2,09,930/- has been granted to respondents 1 to 3 herein to be recovered from the appellant herein, after payment by the insurance company. The said portion of the award is under challenge herein.

2. The only question is whether in the absence of a badge will enable the insurance company to get recovery of the amount from the owner. In paragraph 16 of the award, we find that the Tribunal has considered this aspect. The vehicle involved is a goods vehicle (lorry) and Ext.B1 is the insurance policy. It is a transport vehicle. The Tribunal found that the driver was having a badge (Ext.B2), but it was issued and valid for the period from 3.11.2006 to 2.11.2009. The old transport vehicle licence was valid from 22.8.2000 to 21.8.2003, going by Ext.B2 itself. The accident occurred on 1.11.2006. This

aspect is taken as the violation of policy condition as the vehicle was not driven by the driver without specific authorisation in the driving licence to drive transport vehicle.

3. Learned counsel for the appellant submits that the issue is covered in favour of the appellant in the light of the recent Full Bench decision of this Court in **National Insurance Co. Ltd.** v. **Jisha K.P. and others** [2015 (1) KHC 29 (FB)]. Therein, the Full Bench was of the view in paragraph 26 as follows :-

> “In Iyyappan's case, as we have already noticed, the intention of the Legislature with regard to the provisions in Chapter XI has been examined and it was explained that the Legislature has made third party insurance compulsory, so as to ensure that the victims of the accident could be able to get compensation for the death or injuries suffered. In the light of the above principles, an interpretation of Section 149 of the Act commensurate with the legislative policy, will have to be adopted. The Statute has provided the liability on the part of the insurer so as to pay compensation to third parties. Thus, it can be seen that as laid down by the decisions of the Apex Court, a more extensive remedy has been conferred upon those who have obtained judgments against the user of the vehicle. The question, therefore, will be whether the insurer can try to avoid liability without proving that the breach was so fundamental. In the light

> of the discussion made already, a mere technical violation like absence of a badge could not lead to such a situation, whereby the insurer can avoid liability of the third party. The scheme of the Act will have to be taken into consideration while testing the sustainability of the arguments raised by the insurance company. If that be so, we are of the view that the argument raised by the learned counsel for the insurance company cannot hold good. Therefore, the words "effective licence" in Section 3 cannot ipso facto come to the aid of the insurance company in such cases. The above interpretation will only serve the object and purpose of the enactment and in tune with the same. The dictum laid down in Iyyappan's case, therefore, will squarely apply herein. In the absence of any evidence to show that the breach was so fundamental in causing the accident, there cannot be any automatic direction in allowing the insurance company to recover the amount from the owner also."

In this case it is seen that a pedestrian was knocked down by the vehicle and he was a third party.

4. Therefore, the principles laid down by the Full Bench in the above decision would squarely apply. Accordingly, we allow the appeal and modify the portion of the award directing the insurance company to pay the amount to the claimant and recover it from the appellant is deleted. We

hold that the liability to pay entire amount will have to be borne by the insurance company alone. It is also held that the pre-deposit made under Sec.173(1) of the Act will be refunded to the appellant.

The award is modified accordingly and the appeal is allowed to the above extent. No costs.

Sd/-
T. R. RAMACHANDRAN NAIR
JUDGE

Sd/-
P.V.ASHA
JUDGE

Jvt