

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

MACA.No. 2292 of 2008 ()

AGAINST THE AWARD IN OPMV 533/2004 of MACT,THODUPUZHA DATED
30-01-2008

APPELLANTS/RESPONDENT NO.3:

THE NEW INDIA ASSURANCE CO.LTD.,
KATTAPPANA BRANCH, KATTAPPANA P.O, IDUKKI DISTRICT
REPRESENTED BY ITS MANAGER.

BY ADVS.SRI.KKM.SHERIF
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS/PETITIONERS 1 TO 4 AND RESPONDENTS 1 AND 2:

1. RAJAMMAL, W/O.LATE RAJA NAIDU, 21/WARD
NO.1, EAST STREET, T.ALAGUR NAICKAMPATTY
LAKSHMIPURAM P.O., UTHAMAPALAYAM TALUK, THENU DISTRICT
TAMIL NADU.

2. R.NAGARAJ, S/O.LATE RAJA NAIDU,
21/WARD NO.1, EAST STREET, T.ALAGUR
NAICKAMPATTY, LAKSHMIPURAM P.O., UTHAMAPALAYAM TALUK
THENU DISTRICT, TAMIL NADU.

3. R.AYYAPPAN, S/O.LATE RAJA NAIDU,
21/WARD NO.1, EAST STREET, T.ALAGUR
NAICKAMPATTY, LAKSHMIPURAM P.O., UTHAMAPALAYAM TALUK
THENU DISTRICT, TAMIL NADU.

4. R.EASWARI, D/O.LATE RAJA NAIDU,
21/WARD NO.1, EAST STREET, T.ALAGUR
NAICKAMPATTY, LAKSHMIPURAM P.O., UTHAMAPALAYAM TALUK
THENU DISTRICT, TAMIL NADU.

5. ABHILASH K.S., S/O.SUKUMARAN,
KALAPPURACKAL HOUSE, BALAGRAM P.O, KALLAR
IDUKKI DISTRICT.

6. BABU VISHWANATHAN, VAZHAPRAMBIL HOUSE,
KARUNAPURAM P.O., IDUKKI DISTRICT.

R1 TO 4 BY ADV. SRI.S.SACHITHANANDA PAI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2292 OF 2008

Dated this the 8th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

The moot question that is raised in this appeal is whether the deceased could be termed as a 'passenger' or a 'third party'.

2. The learned counsel for the Insurance Company submitted that there is no evidence going by the Police records to show that he had alighted from the jeep, which is the offending vehicle, whereas the learned counsel for the appellant submitted that actually the deceased had touched the ground and therefore he can only be termed as a 'third party'.

3. The accident occurred on 28.6.2004 at 2.30 p.m.. The deceased, the husband of appellant No.1 late Sri.Raja Naidu died after succumbing to the injuries. The learned counsel for the Insurance Company submitted that the deceased continued to be a passenger in the jeep. Going by the evidence, he has not alighted from the jeep and

had not lost the contact with the jeep.

4. The learned counsel for the claimant submitted that actually the deceased had alighted from the jeep and therefore he cannot be termed as a 'passenger'. The son of the victim was examined as PW1. In paragraph 1 of the award, the narration of the case is given and it is stated that the deceased was getting out of the vehicle and then the first respondent without caring him moved the vehicle ahead causing him to be thrown away on the road and sustained serious injuries.

5. In paragraph 8, the evidence of PW1 has been discussed. Therein also, it is stated that “ while he was getting down from the vehicle at Mundiyeruma, the driver moved the vehicle ahead without caring him and thereby he fell down.”

6. The Tribunal in paragraph 12 of the award found that he had ceased to be a passenger.

7. We have gone through the FIS, postmortem report as well as final report. After going through the various materials before us and in the light of the dictum laid down by this Court in various cases cited at the Bar, namely **New India Assurance Co. Ltd. v. Annakutty**

(1992 (2) KLT 727), New India Assurance Co. Ltd. v. V.Santhamma (1997 KHC 25) and National Insurance Company Ltd. v. Balan @ Balakrishnan and Others (2008(1) KHC 202), we are of the view that the crucial question will be whether the deceased had lost contact with the vehicle. He died due to the head injury sustained by him, evidently after falling down on the road itself. This is clear from the postmortem report.

8. The learned counsel for the Insurance Company submits that the evidence is clear to the effect that the accident was caused while he was alighting from the jeep. According to the learned counsel, the situation is identical to the case in New India Assurance Co. Ltd. v. Annakutty (1992 (2) KLT 727). The learned counsel for the respondents submitted that a later decision of a Division Bench of this Court in New India Assurance Co. Ltd. v. V.Santhamma (1997 KHC 25), especially paragraph 10, will show that if the passenger voluntarily alighted from the bus and touched the ground and ceased to have any physical contact with the bus, it cannot be said that he

continued to be a passenger. According to us, the evidence so far adduced cannot lead to either of the inferences sought to be advanced by the respective counsel on both sides. At this stage, the learned counsel for the claimant sought for a further opportunity to adduce further evidence in the matter so as to establish that the deceased had alighted from the jeep in question.

9. The learned counsel for the Insurance Company submits that one of the other grounds raised in the appeal is with regard to the violation of the policy conditions. All the issues are left open. The Tribunal will consider the matter afresh and pass a fresh award after affording opportunity to both sides to adduce evidence.

The appeal is accordingly disposed of. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.