IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

MACA.No. 2611 of 2008 ( )

AGAINST THE AWARD IN OPMV 452/2004 of M.A.C.T., MANJERI DATED 10-07-2008

APPELLANT/2ND RESPONDENT:

KANNIYAN MAMMED,KANNIYAN HOUSE,
MUNDERI P.O.CHUNGATHARA (OWNER)

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 3:
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1. HUSSAIN, S/O. UNNIMOIDEEN, 49 YEARS,
KUPPANATH HOUSE, MUNDERI P.O.
CHUNGATHARA (VIA)MALAPPURAM DISTRICT.

2. C.P.ABOO S/O.SULAIMAN, CHERU PALLIKKAL
HOUSE, EDAVANNA P.O.(DRIVER)

3. THE ORIENTAL INSURANCE CO.LTD.,
BRANCH OFFICE, JASEELA COMPLEX, NILAMBUR ROAD
MANJERI(INSURER)

R1 BY ADV. SRI.P.VENUGOPAL (1086/92)
R3 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 19-06-2015, ALONG WITH MACA. 1472/2009, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.Nos.2611 OF 2008 &
1472 OF 2009

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Dated this the 19th day of June, 2015

JUDGMENT

Jyothindranath, J.

M.A.C.A.No.1472/2009 is filed by the claimant, whereas M.A.C.A.No.2611/2008 is filed by the owner of the vehicle involved in the accident. The claimant filed the appeal aggrieved by the quantum awarded, whereas the owner filed the appeal as the Insurance Company was absolved from the liability. The Insurance Company was absolved from the liability on the ground that the claimants are gratuitous passengers in a private vehicle.

2. The liability of the Insurance Company can be considered at first. In this case, the policy is a package/comprehensive policy. In **National Insurance Company Ltd. v. Balakrishnan and another (2012 KHC 4663)**, the Honourable Supreme Court held that a

comprehensive/package policy will cover the liability of a gratuitous passenger and it is categorically held that a comprehensive/package policy is standing on a different footing from that of an Act policy. The learned counsel for the appellant/owner also produced a copy of the direction of the Insurance Regulatory and Development Authority. The policy is marked as Ext.B1 before the Tribunal. We have perused the policy. It is categorically written as 'Private Car (Zone A) Policy B Comprehensive'. Thus in the light of the decision in **National Insurance Company Ltd. v. Balakrishnan and another (supra)**, it can be seen that the Insurance Company will be liable. It is found accordingly.

3. The next aspect is regarding the quantum of compensation. The Tribunal awarded a total compensation of ₹1,16,700/- against a claim of ₹4,00,000/-. Ext.A2 is the copy of the wound certificate and Ext.A3 series are the discharge cards and Ext.A4 are the medical bills. The claimant also produced a disability certificate which is marked as

Ext.X1 before the Tribunal. The claimant was in the hospital for a period of 37 days and he sustained both bone fracture on right leg. The disability sustained is assessed as 3%. The appellant/claimant is a businessman who is aged 45 years. The multiplier to be adopted as per the decision in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)** is 14 in this case. The income claimed is ₹7,000/- per month. The Tribunal took an amount of ₹2,500/- only. The accident occurred in the year 2003. Thus it will be only just and proper to consider an income of ₹3,500/- per month.

4. Accordingly, the compensation is refixed as follows :

Head of claim	***Amount Awarded in rupees***
Permanent disability	17640 (3500 x 12 x 14 x 3%)
Pain and suffering	35000
Loss of income	21000
Loss of amenities	10000
Bystander's expenses	5550 (150 x 37)

Head of claim	***Amount Awarded in rupees***
Extra nourishment	2500
Damages to clothing	500
For Review	3000
Medical bills	74047
Total	169237 Rounded off to ₹1,69,200/- (Rupees one lakh sixty nine thousand two hundred forty only)

Thus the appellant in M.A.C.A.No.1472/2009 is entitled for a total compensation of ₹1,69,200/-. The third respondent Insurance Company shall deposit the amount within three months of this judgment. The enhanced compensation will carry interest @ 9% per annum. M.A.C.A.No.2611/2008 is also allowed and the finding of the Tribunal that the Insurance Company is not liable is hereby set aside and the Insurance Company is made liable.

The learned counsel for the appellant in M.A.C.A.No.2611/2008/respondent No.2 before the Tribunal, submitted that a sum of ₹25,000/- was deposited before the Tribunal by way of Banker's cheque bearing No.602804 dated 01.11.2008 of State Bank of Travancore, Manjeri Branch. The said amount is directed to be released to the appellant.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

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