IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

MACA.No. 2664 of 2008 ( )

AGAINST THE AWARD IN OPMV 583/1998 of M.A.C.T.,PERUMBAVOOR DATED 04-12-2007

APPELLANT/3RD RESPONDENT:

NATIONAL INSURANCE COMPANY LTD.
REP. BY ITS MANAGER, REGIONAL OFFICE, 3RD PARTY WING
OMANA BUILDING, PADMA JN., KOCHI-35.

BY ADV. SMT.RAJI T.BHASKAR

RESPONDENTS/PETITIONERS 1 TO 4 AND RESPONDENTS 1 AND 2
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1. ISSAC, S/O MATHAI, MUKKANACHERY HOUSE
IRINGOLE.PO.

2. ANNAMMA, AGED ABOUT 57 YEARS, W/O.ISSAC,
MUKKANANCHERRY HOUSE, IRINGOLE PO.

3. SAIBY, AGED ABOUT 34 YEARS
D/O.ISSAC, DO.DO.(DIED)

4. SANY, AGED ABOUT 31 YEARS, D/O.ISSAC
DO.DO.

5. RAMPAL, S/O.GOPAL
GUMAN COLONY, BHAGAVAN TALKIES, AGRA
UTTAR PRADESH.

6. MANGI LAL, S/O.GYARSI LAL,
VIII-ITARMADA, MALHADE, JAIPUR.

* IT IS RECORDED THAT RESPONDENTS 1 AND 2 ARE THE LEGAL HEIRS OF THE DECEASED 3RD RESPONDENT VIDE ORDER DATED 16.10.2014 IN MEMO DATED 21.8.2013.

R1,2,4 BY ADV. SRI.GEORGE SEBASTIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 02-07-2015 ALONG WITH MACA NO.2881/2008, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.
- -
M.A.C.A.Nos.2664 & 2881 OF 2008
- -
Dated this the 2nd day of July, 2015

JUDGMENT

Ramachandran Nair, J.

Both these appeals are filed by the Insurance Company, the third respondent before the Tribunal. The Company is aggrieved by the award passed in O.P.(MV) Nos. 583/1998 and 573/1999.

2. We heard the learned counsel on both sides. The learned counsel for the Insurance Company Smt.Raji T.Bhaskar mainly contended that the accident occurred not due to the use of the vehicle, but while it was remaining stationary. It is submitted that evidence is to the effect that marble slabs fell on the deceased while unloading it and the petitioner in O.P.(MV)No.573/1999 sustained serious injuries.

3. The learned counsel for the claimant Sri.George Sebastian contended that even if the vehicle is stationary, it cannot be said that the vehicle was not in use. It is submitted that the issue is covered against the appellant in view of the dictum laid down in **New India**

Assurance Co. Ltd. v. Lakshmi (2000 (3) KLT 80). In that case injury was sustained on account of a fertilizer bag falling upon the claimant in the process of unloading it from a stationary lorry. It was held that the accident occurred due to the use of the vehicle. In paragraph 2 of the judgment, it has been held as follows :

> 2. Having heard counsel on both sides, we are of opinion that the appellant is not well-founded in its submission and the Tribunal, in our considered opinion, was perfectly right in holding that the accident was one arising out of the use of the motor vehicle. In this connection, it has to be noted that jurisdiction under S. 165 of the Act is attracted if there is an accident involving death of or bodily injury to a person arising out of the use of a motor vehicle. The primary fact which, therefore, attracts the jurisdiction of the Tribunal is the use of a motor vehicle. The word 'use' is used in the Section in a wide sense. It covers all employment of the motor vehicles, so that whenever the vehicle is put into action or service, there is 'user' of the vehicle within the provisions of S. 165 of the Act, whether the vehicle was being driven, or repaired or simply parked or kept stationary or left unattended. In that sense, the vehicle is used, whenever the vehicle is driven out for some purpose or it is kept stationary. This, without anything more, is sufficient to attract S. 165 of the Act. Therefore, whenever any accident occurs causing death of or injury to persons because of the vehicle or its user the jurisdiction of the Claims Tribunal is attracted. Any accident

occurring in the course of the user for carriage of passengers of otherwise is liable to be compensated through the forum provided under S. 165 of the Act. The basic requirement of such claim is only that it should arise out of the use of motor vehicle. There is no warrant for the contention that the accident should take place at a time when the vehicle was in motion or the accident has resulted in damage to the vehicle. All that is required is that there should be an accident, viz. something unexpected and unintended and that should arise out of the user of the vehicle. (Vide *Padmanabhan Nair v. Narayanikutty* (1987 (2) KLT 370 (DB). Adverting to the language and phraseology employed in S. 165 of the Act, a Division Bench of this Court in the decision reported in *Babu v. Remasan* (1995 (2) KLT 300) observed as follows:

> "Learned counsel for the Insurance Company tried to distinguish those decisions on the facts by pointing out that the use of the motor vehicles in those two decisions is direct, though the vehicles were stationary whereas in this case the use of the motor vehicle was only indirect though the rope was used for the purpose of keeping the load in the vehicle intact. The said distinction on the facts is not enough to exclude the accident which occurred in this case out of the ambit of the words "use of a motor vehicle". Such use need not necessarily be so intimate and closely direct as to make it "a motor accident" in the sense in which that expression is used in common parlance. The expression employed by the Legislature is "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of a motor vehicle". Evidentially the Legislature wanted to

> enlarge the scope of the word 'use' and not to restrict it for denying compensation in deserving cases. The test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then. After all the provisions for dealing with the compensation cases are intended for a sublime social objective. We are, therefore, not inclined to adopt a restrictive interpretation for the word 'use' in the present context."

4. We respectfully agree with the dictum laid down therein and therefore the said contention has been rightly rejected by the Tribunal. The amount awarded is not under challenge herein.

5. The learned counsel for the Insurance Company then submitted that the coverage under policy is only for persons carried in the cabin and not for the loading and unloading workers. It is submitted that if that be so the owner alone will be liable. The learned counsel for the respondent submits that no such contention was raised by the Insurance Company in the written statement. The learned Tribunal has found that the issuance of policy is admitted and therefore the Company is liable. We have gone through the contentions in the written statement. The main contention is that the said vehicle was

remaining stationary and it cannot be treated as an accident arising out of the use of the vehicle. Therefore the contention that is now raised before this Court was not raised before the Tribunal. One of the other contentions raised was that there was no negligence on the part of the driver also.

In that view of the matter, we find no reason to interfere with the award passed by the Tribunal. Accordingly, both the appeals are dismissed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

sv.