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 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

MACA.No. 2739 of 2008 ( )

AGAINST THE AWARD IN OP(MV) 996/2006 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALA DATED 28-07-2008

APPELLANT/RESPONDENT NO.1:

DR.P.K.KORAH, PERUMALIL HOUSE
ETTUMANOOR, KOTTAYAM [DIED]

* ADDITIONAL APPELLANTS 2 TO 4 IMPLEADED:

*2. DR.PRIYA ANJO, AGED 39 YEARS, D/O. LATE DR.P.K.KORAH
KAVALAKATTU HOUSE, EAST FORT P.O., PIPELINE ROAD,
THRISSUR-680 001.

*3. DR. PREETHI JEEVAN, AGED 36 YEARS, D/O. LATE DR.P.K.KORAH
GANAM, HMC ROAD, EDAPPALLY P.O., KOCHI 682 024

*4. PRAVEEN JOSE GRIGARI,AGED 29 YEARS S/O. LATE DR.P.K.KORAH,
PERUMALIL HOUSE, ETTUMANOOR, KOTTAYAM 686 631

[THE LEGAL REPRESENTATIVES OF THE DECEASED APPELLANT ARE IMPLEADED AS ADDITIONAL APPELLANTS 2 TO 4 VIDE ORDER DATED 27.1.2014 IN I.A.183/2014 IN MACA 2739/2008]

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENTS/PETITIONER & RESPONDENTS 2 TO 6:
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1. DR.ALEYAMMA KORAH, AGED 62
W/O.DR.P.K.KORAH, PERUMALIL HOUSE, ETTUMANOOR
KOTTAYAM.

2. SANTHOSH, S/O.PRABHAKARAN, MATHALIPURAYIL HOUSE,
MEENACHIL TALUK, LALAM VILLAGE
PAYAPAR KARA.

3. THE NEW INDIA ASSURANCE CO.LTD.
ETTUMANOOR.

4. MURALEEDHARAN NAIR.T.P.,
S/O.PADMANABHAN NAIR, PANDURITHANDATHIL HOUSE, ELAKAD.

5. DEVASIA THOMAS, S/O.THOMAS, KUTTIKATTUNNEL HOUSE,
ATHIRAMPUZHA VILLAGE, MANNANAM KARA
KOTTAYAM DISTRICT.

6. THE NEW INDIA ASSURANCE CO.LTD., ETTUMANOOR.

R1 BY ADV. SRI.AGINOV MATHAPPAN
R3 BY ADV. SMT.P.K.SANTHAMMA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 09-07-2015, ALONG WITH MACA. 2943/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

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

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M.A.C.A.Nos.2739/2008 & 2943/2014

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Dated this the 9th day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

Both these appeals are from the award in O.P.(M.V.) No.996/2006 on the file of the Motor Accidents Claims Tribunal, Pala. M.A.C.A.2739/2008 which is filed by the owner of the vehicle who was first respondent before the Tribunal and the claimant is the appellant in M.A.C.A.2943/2014.

2. We heard Adv. Sri. C.M. Tomy and Mathew Skaria for the appellant in M.A.C.A.No.2739/2008 and Adv. Smt. P.K. Santhamma for the Insurance Company.

3. We heard Adv. Sri. Aginov Mathappan for the appellant in M.A.C.A.No.2943/2014 and Adv. Sri. John Joseph Vettikkad for the Insurance Company.

4. As far as M.A.C.A.2739/2008 is concerned, part of the award of the Tribunal is under challenge by the owner of the vehicle, viz; as regards the liability of the Insurance

Company for payment of the amount of compensation.

5. The vehicle is a private car which was insured with the 6th respondent insurer. Ext.B5 is the copy of the policy produced by the Insurance Company which shows that it was a package policy. The Tribunal on an assessment of the evidence took the view that the Insurance Company (third respondent) is not liable as there is no coverage for gratuitous passengers. While discussing the matter, the Tribunal referred to the decision of the Karnataka High Court in **Bajaj Allianz General Insurance Co. Ltd. v. B.M. Niranjan and another [2008 ACJ 554]** and of the Apex Court in **Amrit Lal Sood v. Kausalya Devi Thappar [1998 ACJ 531 (SC)]**.

6. The latter decision of the Supreme Court held that Insurance Company is liable to indemnify the risk of pillion rider in package policies.

7. The learned counsel for the appellant submitted that the issue is covered in favour of the appellant in the light of the decision of the Apex Court in **National**

Insurance Company Ltd. v. Balakrishnan and Anr. [AIR 2013 SC 473].The question raised was whether the occupant of a car and a pillion rider of a motor cycle are covered under the comprehensive/package policy. The Apex Court in paragraph 21 held as follows:

> 21. In view of the aforesaid factual position, there is no scintilla of doubt that a “comprehensive/package policy” would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an “Act Policy” stands on a different footing from a “Comprehensive/Package Policy”. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a “Comprehensive/ Package Policy” covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the “Act Policy' which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a “Comprehensive/Package Policy”, the liability would be covered.

8. We have gone through policy Ext.B5 wherein in the top of the second page it is clearly written as 'package'. In the light of the above, we have no doubt in our mind that the occupant of the car is covered by the policy.

9. The accident in this case occurred while the wife of the appellant was travelling in their car. She sustained serious injuries. It occurred on 12.7.2006 at 8.30 p.m. at Athirampuzha. She was travelling in a car bearing registration No.KL-5/V-1881 through the Ettumanoor -Athirampuzha road. It was alleged that an autorickshaw bearing registration No.KL-5/E-9507 driven by the 5th respondent before the Tribunal hit the car. The Tribunal on an assessment of the evidence found that the driver of the car was negligent.

10. The question that has been raised in M.A.C.A.2943/2014 is one concerning with the award of compensation. She had sustained fracture humerus and had undergone a surgery. Ext.A6 is the medical certificate issued form Lisie Hospital, Ernakulam which supports the above. She remained in the hospital for 3 days. The Tribunal found that she was entitled for loss of earnings for a period of six months. For assessing the same Ext.A11 income tax return was considered. The annual income claimed is as

Rs.1,50,000/-. But the Tribunal deducted 1/3rd for personal expenses and took the loss of earnings for six months at Rs.50,000/-. Learned counsel for the appellant submitted that the said method cannot be justified and deduction for personal expenses only in death cases.

11. We agree with the above said contention. We have gone through Ext.A11 the income tax return. The taxable income going by the same will be around Rs.1,30,000/- after deducting Rs.18,998/- as the income tax payable. Therefore, we take the annual income for assessing the compensation at Rs.1,30,000/- and going by the same she will be entitled for Rs.65,000/- as loss of earnings for 6 months also. She will be also entitled for enhancement of amount towards pain and suffering and loss of amenities.

12. Accordingly, we re-fix the compensation in the following manner:

Head of claim	Amount re-fixed in Rs.
Transportation to hospital	5000
Extra nourishment	1000
Damages to clothing	1000

Head of claim	Amount re-fixed in Rs.
Medical bills	32773
Pain and suffering	35000
Compensation for permanent disability	10835x12x9x12/100 140421.6
Loss of amenities	25000
Loss of earnings for six months	65000
Total	**305194.6** **Rounded off to** **Rs.3,05,200** **(Rupees three lakhs five thousand two hundred only)**

13. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

14. In the light of order passed in C.M.A.No.3388/2014 in M.A.C.A.No.2943/2014, the Insurance Company will not be liable for the payment of interest for 2923 days covered by the delay. We hold that the Insurance Company is liable as the policy is a package policy and direct the Insurance Company to deposit the amount of compensation with interest, less the amount

already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellant will be entitled for the release of the amount.

15. There will be a direction to the Tribunal to release the amount of Rs.25,000/- deposited by the appellant in M.A.C.A.No.2739/2008 under Section 173 of the Motor Vehicles Act, for filing the appeal.

The appeals are accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/