IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 28TH DAY OF FEBRUARY 2024 / 9TH PHALGUNA, 1945

MACA NO. 3769 OF 2023

AGAINST THE AWARD DATED 04.04.2023 IN O.P(M.V) NO.1416/2015 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

APPELLANT/3RD RESPONDENT:

NEW INDIA ASSURANCE CO. LTD,
PERINCHERY'S BUILDING, GROUND NORTH, THRISSUR 68001
REP BY THE AUTHORISED SIGNATORY, ASST. MANAGER,
REGIONAL OFFICE, KOCHI, PIN - 682011
BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS/CALAIM PETITIONER AND R1 AND 2:

1 **JISHAD, AGED 30 YEARS**
S/O.BASHEER, KALLIPARAMBIL HOUSE, P.O.CHERPU,
POTTUCHIRA, THRISSUR, PIN - 680711

2 **SANDEEP,**
S/O.NARAYANANKUTTY, JYOTHI NIVAS, MYLATH,
GREEN AVANUE, ABHILASHJ CORNER, PO., AYYANTHOLE,
THRISSUR, PIN - 680003

3 **NAJEEB,**
S/O.HASSANAR, PALAKKAPARAMBIL HOUSE, VELLARKULAM,
P.O.PAZHAYANNUR, THRISSUR, PIN - 680587

BY ADVS.SRI.A.R.NIMOD
SRI.M.A.AUGUSTINE(K/000511/2005)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 28.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 28th day of February, 2024

This appeal is originated from an award passed by Motor Accidents Claims Tribunal, Thrissur (for short 'the Tribunal') in O.P(M.V) No.1416/2015 on 04.04.2023.

2. The appeal is filed by the insurer of the tempo van bearing Registration No.KL-08-AX-1837, allegedly involved in the motor accident. Originally the claim petition was preferred under Section 166(1) of the Motor Vehicles Act, 1988 (for short 'the M.V Act'). Later on, it was converted to a petition under Section 163(A) of the M.V Act. The appellant herein had raised a challenge in the written statement against the involvement of the Tempo van in the motor accident. The appellant had also produced Ext.B1 to B3 which are nothing but the final report in a crime registered with reference to the motor accident, the scene mahazar prepared in that crime and

also the judgment in C.C.No.4590/2014, which was registered on the files of Judicial First Class Magistrate Court-II, Thrissur on the basis of Ext.B1. The rider of the motorcycle appeared before the Court on process being served on him, pleaded guilty of the offences and paid the fine. The contention raised by the learned counsel in the appeal proposed for admission was that the involvement of the Tempo van was not established before the Tribunal.

3. In an application under Section 163(A) of the MV Act, negligence of the driver of the tempo van is not at all required to be proved, but, only the involvement of the vehicle. It is found from the evidence adduced by the respondent before the Tribunal that it incorporates the Case Diary pertaining to Crime No.866/2014 of Nedupuzha Police Station, registered with reference to the motor accident in question. It was marked in evidence as Ext.X1. The Tribunal found from Ext.A1, the FIR and Ext.X1 marked from the side of the respondents that the

tempo van is very much involved in the motor accident. Consequently, the award in question was passed.

4. This Court finds no merit in the arguments advanced by the learned counsel that, the respondent failed to establish involvement of the vehicle and the Tribunal is unjustified and erred in passing the award under challenge.

5. The involvement of the vehicle being convincingly established from Ext.A1 and Ext.X1, interference with the award under challenge is uncalled for.

Appeal is not liable to be admitted for the reasons and is dismissed *in limine*.

Sd/-

MARY JOSEPH
JUDGE

NAB