IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

THURSDAY, THE 13TH DAY OF MARCH 2025 / 22ND PHALGUNA, 1946

MACA NO. 84 OF 2003

AGAINST THE ORDER/JUDGMENT DATED 19.12.2002 IN OPMV NO.467 OF 2000 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM

APPELLANT/2ND AND 4TH RESPONDENT:

THE NEW INDIA ASSURANCE CO.LTD
NOW REPRESENTED BY ITS ASSISTANT ADMINISTRATIVE OFFICER, REGIONAL OFFICE, M.G.ROAD, KOCHI -11

BY ADV MATHEWS JACOB (SR.)

RESPONDENTS/PETITIONER AND RESPONDENTS 1 & 3:

1 **MURALEEDHARAN**
S/O.LATE SIVARAMAN NAIR, ELAYEDATH HOUSE, CHERUKODE P.O., VALLAPPUZHA (VIA), OTTAPALAM TALUK.

2 **SANKARANARAYANAN**
S/O.GOVINDAN NAIR, "SANKAR SADAN", CHOORAKODE, VALLAPUZHA (VIA), OTTAPALAM TALUK.

3 **SULAIKHA NOOHU**
W/O.M.E.AHAMMED NOOHU, TC/15/164, "UJALA", THYKAD, THIRUVANANTHAPURAM

BY ADVS.
V.K.BALACHANDRAN
N.K.KARNIS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 13.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The 2nd and 4th respondents in O.P.(M.V.) No.467/2000 on the file of the Motor Accident Claims Tribunal, Ottapalam, are the appellants herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal)

2. The above O.P was filed under Section 163A of the Motor Vehicles Act claiming compensation for the injuries sustained by the Original petitioner in a motor vehicle accident that occurred on 27.01.2000. According to the petitioner, on 1 27.01.2000 at about 8.45 a.m., while he was riding a motor cycle, another motorcycle bearing reg.no.KL 13/5685 driven by the 1st respondent in a rash and negligent manner hit against his motor cycle and as a result of which, he sustained injuries.

3. The 2nd respondent is the insurer of the offending vehicle. Respondents 3 & 4 are the owner and insurer of the motorcycle ridden by the petitioner.

4. The Tribunal award the compensation Rs.26,180/- and directed the 2nd respondent to pay the same and thereafter permitted the 2nd respondent to recover one half of the compensation from respondents 3 & 4. Aggrieved

by the above award, respondents 2 & 4 preferred this appeal.

5. Now the point that arises for consideration is the following:

- *Whether in a claim petition under Section 163 A of the Motor Vehicles Act, negligence can be taken as a defense by the insurer.*
- *Whether the insurer can claim compensation under Section 163 A of the Motor Vehicles Act, against his own insurer.*

6. Earlier, when the matter was pending before a Division Bench of this court, the question whether the insured can maintain a claim against the insurer under S.163A of the M.V.Act was referred to a Full Bench. Ultimately, a five judge bench relying upon the decisions of the Hon'ble Supreme Court in **Oriental Insurance Company Ltd. Vs. Rajni Devi and others** 2008 KHC 4640, **Ningamma and Another vs. United India Insurance Company Ltd.** 2009 KHC 5046 and **Ramkhiladi and Another vs. United India Insurance Company Ltd and Another** 2020 KHC 6008 held that the owner of the vehicle cannot seek compensation against its own insurer under Section 163 A of the Motor Vehicles Act. It was further held that the insurer cannot raise a defense of negligence in a claim under Section 163 A.

7. In the instant case, the Tribunal found that there was contributory negligence on the part of the claimant and therefore only 50% of the compensation was awarded as against the insurer of the offending vehicle (2nd respondent) and the 2nd respondent was permitted to recover 50% of the compensation from the insurer of the claimant.

8. In the light of the above decision of the Larger Bench, the impugned award to the extent it permitted the 2nd respondent to recover 50% of the compensation from respondents 3 & 4 is liable to be set aside.

9. In the result the appeal is disposed of setting aside the award to the extent it permitted the 2nd respondent to recover 50% of the compensation from respondents 3 & 4. In other words, the 2nd respondent shall pay the full compensation ordered in favour of the petitioner.

Sd/-
C. PRATHEEP KUMAR,
JUDGE

Pvv