IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 7TH DAY OF MARCH 2025 / 16TH PHALGUNA, 1946

MACA NO. 3823 OF 2016

AGAINST THE ORDER DATED 24.12.2013 IN OPMV NO.329 OF 2011 OF ASSISTANT SESSIONS COURT/PRINCIPAL SUB COURT / COMMERCIAL COURT, KOZHIKODE

APPELLANTS/ 1ST & 2ND RESPONDENTS:

1 A.SREEDHARAN
S/O.CHATHU, ARAVEETTIL HOUSE,
KOLLAM, KOYILANDY, KOZHIKODE.

2 ARUN A.S.
S/O.SREEDHARAN, AGED 28 YEARS,
ARAVEETTIL HOUSE, KOLLAM, KOYILANDY, KOZHIKODE.

BY ADV
SRI.AVM.SALAHUDIN

RESPONDENTS/CLAIMANT & 3RD RESPONDENT:

1 ABDUL RABB
S/O.MUHAMMED ISMAYIL AGED 56 YEARS,
KOTTARAKUNNUMMEL, P.O.NOCHAD,
VIA NADUVANNUR, KOZHIKODE-673001.

2 THE ORIENTAL INSURANCE COMPANY LIMITED
DIVISIONAL OFFICE II, PRAMOD BUILDING,
CHEROOTTY ROAD, CALICUT-673001.

BY ADVS.

2025:KER:23627

SMT.DIVYA B.NAIR
SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 07.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:23627

J U D G M E N T

Dated this the 07th day of March, 2025

The 1st Respondent in O.P.(M.V.) No.329/2011, on the file of the Motor Accident Claims Tribunal, Kozhikode, is the appellant herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal).

2. The petitioner filed the above O.P. under Section 166 of the Motor Vehicles Act, 1988, claiming compensation for the injuries sustained in a motor vehicle accident that occurred on 23.09.2010. According to the petitioner, on 23.09.2010, at about 1 p.m., while he was travelling in a goods autorickshaw which was carrying goods for road work driven by the 2nd respondent overturned, and as a result of which he sustained injuries. It is alleged that the 1st respondent is the owner, and the 3rd respondent is the insurer of the goods autorickshaw. According to them, the accident occurred due to the rash and negligent driving of the goods autorickshaw by the 2nd respondent. The quantum of compensation claimed in the O.P. is Rs.4,31,000/-.

3. The insurance company filed a written statement, admitting the accident as well as policy, but disputing the negligence on the

part of the driver of the offending vehicle.

4. The evidence in the case consists of the oral testimony of PW1 and Exts.A1 to A6, and C1, which were marked from the side of the petitioner. Ext.B1 was marked from the side of the 3rd respondent.

5. After evaluating the evidence on record, the Tribunal found negligence on the part of the driver of the offending vehicle, but exonerated the insurer holding that the petitioner was a gratuitous passenger, awarded a total compensation of Rs.1,11,400/- and directed the 1st respondent to pay the same.

6. Aggrieved by the above award of the Tribunal, the Respondent No.1 preferred this appeal.

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

1) Whether the petitioner was an employee of the owner of the goods or a gratuitous passenger?

2) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

8. Heard, Sri. A. V. M. Salahudin, the learned Counsel appearing for the appellant, Smt. Divya B. Nair, the learned counsel for the claimant, and Sri. A. R. George, the learned Standing Counsel for the insurer.

9. The Point: In this case the accident as well as valid insurance policy of the offending vehicle are admitted. The Tribunal exonerated the insurer holding that the petitioner was a gratuitous passenger in the goods autorickshaw and also that the petitioner failed to prove that he was an employee of the 1st respondent or the cleaner of the said vehicle.

10. The learned counsel for the 1st respondent/appellant would argue that in this case there is ample evidence to prove that the petitioner was engaged by the 1st respondent for the work of road tarring and that even at the time of the accident, tarring materials were transported in the goods autorickshaw, and in spite of that, the Tribunal has found that the petitioner failed to prove that he was an employee of the 1st respondent. According to him, the above findings of the Tribunal are liable to be interfered with.

11. On the other hand, the learned counsel for the 3rd respondent would argue that in this case there is no reliable evidence to prove that the petitioner was an employee or a person engaged by the owner of the goods, and as such, the tribunal was justified in mulcting the liability on the 1st respondent. He has also relied upon the decisions in ***National Insurance Co. Ltd. v. Challa Bharathamma and others [2004 ACJ 2094], Raveendranadhan K. N. and Another v. Kerala State Electricity Board and***

Others [2021(2) KHC 455] , New India Insurance Company Ltd. vs. Asha Rani and Others [2003 (2) SCC 223] , New India Insurance Company Ltd. v. Daisy Paul and another [2021 (2) KHC 449] and ***National Insurance Company Ltd. v. Cholleti Bharatamma and Ors. [2008 (1) SCC 423],*** in support of his argument.

12. After the amendment to Section 147 of the Motor Vehicles Act, which came into force with effect from 14.11.1994, any person, including the owner of the goods or his authorised representative, carried in the goods vehicle is covered by the insurance policy.

13. The accident involved in this case occurred on 23.09.2010, after the above amendment. Then the only question to be looked into is whether the petitioner was either the owner of the goods or his authorised representative carried in the vehicle. The petitioner, as PW1, deposed that on the date of the accident, he was engaged in road work by the 1st respondent and that at the time of the accident, four employees, including himself, were travelling in the said goods autorickshaw. I do not find any grounds to disbelieve the oral testimony of PW1 to the effect that at the time of the accident he was engaged by the 1st respondent for the purpose of road tarring and that he was travelling in the cabin of the said autorickshaw along

with the goods owned by the 1st respondent.

14. The learned counsel for the 3rd respondent argued that the seating capacity as per Ext.B1 policy is only 1+1, and since 4 persons in addition to the driver travelled in the goods autorickshaw, it is a violation of policy conditions and as such, the insurer cannot be held liable for indemnifying the compensation. However, it is to be noted that though 4 persons travelled in the autorickshaw, only the petitioner came forward with a claim for damages, and as such, I do not find any merits in the above argument advanced by the learned counsel.

15. From Ext.B1 policy, it is seen that it covers a driver as well as one employee. From the evidence of PW1 it is revealed that at the time of the accident he was engaged by the 1st respondent for the purpose of road tarring and that he was travelling in the cabin of the said autorickshaw along with the goods owned by the 1st respondent. In the above circumstance, the Tribunal was not justified in holding that the petitioner had failed to prove that he was the employee of the 1st respondent. In other words, the petitioner has succeeded in proving that he was travelling in the autorickshaw as an authorised representative of the 1st respondent, and as such, as per Ext.B1 policy, the 3rd respondent has every duty to indemnify the compensation to be awarded in this case.

16. Therefore, this appeal is allowed. The impugned award of the Tribunal, to the extent it directs the 1st respondent to pay the compensation to the petitioner, is set aside, and the 3rd respondent, the insurer, is directed to pay the compensation.

The learned counsel for the appellant submitted that 50% of the awarded amount was already deposited before the Tribunal, and hence the same is to be disbursed to the claimant. If any such amount is deposited as submitted, the Tribunal shall disburse the said amount to the appellant.

Sd/-
C. PRATHEEP KUMAR,
JUDGE

HKH/07.03.2025