

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

FRIDAY, THE 23<sup>RD</sup> DAY OF SEPTEMBER 2022 / 1ST ASWINA, 1944

MACA NO. 2724 OF 2014

AGAINST THE ORDER/JUDGMENT IN OPMV 658/2007 OF ADDITIONAL  
MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA

APPELLANT/2ND RESPONDENT IN OP(MV) No.658/2007:

THE NEW INDIA INSURANCE COMPANY LTD.  
BRANCH KAYAMKULAM, REPRESENTED BY ITS MANAGER,  
REGIONAL OFFICE, M.G.ROAD, ERNAKULAM.

BY ADVS.  
SRI.LAL GEORGE  
SMT.LAKSHMI V.PARAMESWARAN

RESPONDENTS/CLAIMANTS 1 TO 4 AND 1ST RESPONDENT IN OP(MV)  
No.658/2007:

- 1 RAJESWARI  
AGED 20 YEARS  
W/O.SANILKUMAR, ANPATHILCHIRA, ILLICHIRA P.O.,  
AMBALAPUZHA - 688 561.
- 2 DEVIKA  
AGED 6 ½ YEARS  
D/O.RAJESWAI, ANPATHILCHIRA, ILLICHIRA P.O.,  
AMBALAPUZHA, PIN - 688 561. REPRESENTED BY HER  
MOTHER REJESWARI.
- 3 MANIYAPPAN  
AGED 63 YEARS  
S/O.KRISHNAN, ANPATHILCHIRA, ILLICHIRA P.O.,  
AMBALAPUZHA - 688 561.
- 4 RADHAMANI  
AGED 52 YEARS  
W/O.MANIYAPPAN, ANPATHILCHIRA, ILLICHIRA P.O.,  
AMBALAPUZHA, PIN - 688 561.
- 5 REMA  
PADATHU KIZHAKKETHIL, VADAKKUMTHALA,  
KARUNAGAPPALLY - 690 518.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN  
FINALLY HEARD ON 19.09.2022, THE COURT ON 23.09.2022  
DELIVERED THE FOLLOWING:

**SOPHY THOMAS, J.**

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M.A.C.A No.2724 of 2014  
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Dated this the 23<sup>rd</sup> day of September, 2022

**J U D G M E N T**

The 2<sup>nd</sup> respondent/insurer in O.P (MV) No.658 of 2007 on the file of Motor Accidents Claims Tribunal, Alappuzha is the appellant herein, assailing the impugned award dated 17.01.2014.

2. The legal heirs of deceased Sanilkumar approached the Tribunal claiming compensation under Section 163A of the Motor Vehicles Amendment Act, 1994 read with Rule 371 of the Kerala Motor Vehicles Rules, 1989. The Tribunal awarded compensation of Rs.3,41,802/- and directed the appellant herein to deposit the award amount with interest.

3. The case of the appellant is that, the deceased stepped into the shoes of the owner of the vehicle, and since the accident occurred due to the negligence of the deceased himself, his legal heirs are not entitled to get compensation under Section 163A of the M.V Act. Though they have pleaded

that fact in their written statement, learned Tribunal, ignoring that contention, awarded compensation which is per se illegal. Hence this appeal.

4. Before the Tribunal, no oral evidence was adduced from either side. Exts.A1 to A7 were marked.

5. Now let us see whether the impugned award is liable to be interfered with.

6. The death of Sri.Sanilkumar in the road traffic accident occurred on 19.02.2007 is not in dispute. Respondents 1 to 4/claimants are the legal heirs of deceased Sanilkumar also is admitted. The 5<sup>th</sup> respondent is the owner of the motorcycle in which the deceased was travelling. Ext.A5 final report is to the effect that, the deceased was riding the motorcycle and on seeing a bus coming from opposite direction, he swerved the motorcycle and it capsized resulting in the accident. No other vehicle was involved in the accident.

7. Learned counsel for the appellant contended that, since the deceased stepped into the shoes of the insured, the claim under Section 163A of the M.V Act is not maintainable. The deceased himself was the tortfeasor and he borrowed the

motorcycle from the 5<sup>th</sup> respondent/owner. Since he stepped into the shoes of the owner, he cannot be considered as a third party.

8. Learned Tribunal did not consider maintainability of the claim put forward by the legal heirs of deceased Sanilkumar in spite of the contentions taken up by the appellant. Learned Tribunal found that, the accident occurred due to the rash and negligent driving of the motorcycle by the deceased. Even then the Tribunal directed the owner and insurer of that motorcycle to pay compensation to the legal heirs of the victim.

9. In **Ramkhaladi and another vs. United India Insurance Company and another** (2020 ACJ 627) the Apex Court held that, Section 163A of the Act has to be interpreted in keeping with the intention of the legislature and the social perspective it seeks to achieve. It is a provision which is beneficial in nature and it has been enacted as a measure of social security. The owner of the vehicle or his legal representative or the borrower of the vehicle cannot raise a claim for compensation from the insurer of that vehicle as he

is not a third party.

10. The learned Tribunal even after finding that the accident occurred due to the rash and negligent riding of the motorcycle by the deceased himself, awarded compensation to the legal heirs of the deceased directing the owner and insurer of that vehicle to compensate them. The owner and insurer are privy to the contract of insurance between them. If the contract of insurance specifically provides for personal accident cover of the owner, the insurer is liable as per the terms of the insurance policy. In the case on hand, though the Insurance Company admitted existence of valid policy as on the date of accident, it is not specified whether it was having personal accident coverage for the owner. If the insurance policy had personal coverage for the owner of the offending vehicle, the Company is liable to the extent of that coverage. But, since the appellant or the respondents failed to produce the insurance policy of the offending motorcycle, this Court is unable to fix the compensation, if any, payable to the legal heirs of the deceased who stepped into the shoes of the owner. Anyway, the claim put forward by respondents 1 to 4

under Section 163A of the M.V Act was not maintainable as the deceased stepped into the shoes of the owner, and the accident occurred due to his own rash and negligent riding of the motorcycle. Since he himself was the tortfeasor, his legal heirs cannot maintain a claim against himself who stepped into the shoes of the owner. So, the impugned award is liable to be set aside.

In the result, the appeal is allowed setting aside the impugned award. No order as to costs.

Sd/-

**SOPHY THOMAS  
JUDGE**

smp