(2021) 03 KL CK 0074

In the High Court Of Kerala

Case No : Maca No. 1616 Of 2010

Rahim Kutty APPELLANT

Vs

Divisional Manager And Ors RESPONDENT

Date of Decision : 08-03-2021

Acts Referred:

Citation : (2021) 03 KL CK 0074

Hon'ble Judges : Mary Joseph, J

Bench : Single Bench

Advocate : Pratheesh P, M. Jacob Murickan, K. Siju, N.S. Najeeb

Final Decision : Allowed

Judgement

1. This appeal is directed against an award passed by Motor Accidents Claims Tribunal, Kollam on 13.03.2008 in O.P(M.V) No.851/2004.

2. For the sake of clarity, the parties to this appeal will hereinafter be referred to as the petitioner and respondents 1 and 2 in accordance with their

status in the Original Petition.

3. In the award under challenge, the Tribunal has awarded a compensation of Rs.1,28,300/-(Rupees one lakh twenty Eight Thousand and Three

Hundred only) and directed the 1st respondent to pay the same with interest at the rate of 7.5% per annum from 08.07.2004, the date of the claim

petition till the date of realization. Aggrieved thereby, the 1st respondent is now before this Court in the appeal on hand.

4. Sri.Pratheesh P., the learned counsel for the 1st respondent contended that he was the owner cum driver of the offending vehicle at the relevant

time of accident and since notice was not served on him from the Tribunal, he remained ex parte to the proceedings. The offending vehicle belonging to him was insured with National Insurance Company Ltd., Kollam and it has a valid insurance at the time of accident. The real insurer was not

impleaded as the respondent in the petition seeking compensation. New India Assurance Company Ltd. was brought on record as the 2nd respondent

mistakenly by the petitioner and based on its stand in the written statement filed that the offending vehicle was not insured with them, it was

exonerated by the Tribunal from liability to indemnify the 1st respondent insured. In the above context, liability to pay compensation awarded was

fixed on the 1st respondent himself. It is contended by the learned counsel that in the police records relating to the motor accident in question policy

number shown in the petition seeking compensation was that of vehicle bearing Registration No.KL-2N/1573, in which, the petitioner was travelling at

the relevant time of accident.

5. The policy number of the vehicle with registration No.KL-2N/1573 in which the petitioner was traveling at the relevant time was shown as the

policy number of the offending vehicle and therefore the petitioner was misled and impleaded National Insurance Company Ltd as the insurer of the

offending vehicle in the petition seeking compensation. According to the 1st respondent, if the real insurer was shown in the array of the respondents

liability to compensate the petitioner would not have been fixed on him rather the liability would have been fixed on the insurer to indemnify him.

Accordingly, the learned counsel has sought for setting aside the award and to pass a fresh award after getting the real insurer into the array of

respondents. By virtue of the order passed on 01.02.2019 in I.A. No.1 of 2018, the real insurer was brought on record as additional 3rd respondent.

Sri. N.S. Najeeb entered appearance for the additional 3rd respondent and he has submitted during the course of argument that the policy with

reference to the autorickshaw bearing registration No.KL-2H/6447 is required to be verified. According to him, if O.P.(MV) No.851/2004 is

remanded for reconsideration, he must be permitted to file the written statement and to contest the Original Petition on merits.

6. The petitioner though served with notice in the appeal, did not appear either in person or through a counsel. Though it was contended by the 1st

respondent that notice was not served on him from the Tribunal, going by the impugned award, it was found that the 1st respondent was set ex parte by the Tribunal. If the 1st respondent was not served with notice, the Tribunal ought not to have declared him as ex parte. Therefore, the contention

that notice was not served on him from the Tribunal is devoid of any merits and is discarded.

7. It is found from the cause title of the award that the Divisional Manager of National Insurance Company Ltd ., Hospital Road, Kollam was made

the 2nd respondent in the petition seeking compensation. The 2nd respondent entered appearance on notice being served on him and in the written

statement filed has taken a specific contention that they are not holding policy for the autorickshaw bearing registration No.KL-2H/6447, owned by

the 1st respondent at the relevant time of the accident. In the above circumstances, the Tribunal exonerated the 2nd respondent from liability to

indemnify the 1st respondent and fixed the liability on the 1st respondent to compensate the petitioner.

8. Since the petitioner has not turned up in the appeal on hand, this Court is not convinced of the reason for wrong impleadment of the insurer as

alleged by the 1st respondent. However, the factum remains that the insurer impleaded in the petition seeking compensation was not the real insurer of

the offending vehicle. The 1st respondent alleges that the offending vehicle owned by him was insured with National Insurance Company Ltd., Kollam

and a copy of the policy is also made available as Ext.P1. This Court is convinced that KL-2H/6447 has valid insurance with National Insurance

Company Ltd., the additional 3rd respondent in the appeal as on date of accident. As per Ext.P1, the policy issued with No. 570500/31/02/6300012612

in the name of Sri.Rahim K., for the autorickshaw bearing registration No.KL-2H/6447 has insurance coverage from 30.09.2002 till 29.09.2003. The

date of accident being 12.07.2003, the vehicle has valid policy coverage. Due to non-impleadment of the real insurer, the Tribunal was not apprised of

the factum of insurance coverage of the offending vehicle at the time of passing of the impugned award. Therefore, interest of justice demands that

the real insurer must be brought on record and the liability of the insurer, adjudicated by the Tribunal on the basis of the policy produced now. The

award under challenge was passed uncontested. As the National Insurance Company Ltd is a necessary party, it must be brought on record in O.P.

(MV) No.851/2004 on the files of Motor Accident Claims Tribunal, Kollam. It must also be granted with opportunity to file written statement and to contest the petition seeking compensation on merits. For the purpose, the impugned award needs to be set aside.

In the result, the MACA stands allowed. The impugned award is set aside. The Original Petition is remanded to Motor Accident Claims Tribunal,

Kollam for reconsideration and passing of a fresh award fixing liability upon the real person. The real insurer shall be brought on record as the 2nd

respondent in the Original Petition seeking compensation. On the insurer being impleaded as the 2nd respondent, he must be provided with reasonable

opportunity to file written statement and to contest the petition seeking compensation on merits. For the purpose, opportunity must be given to the

insurer to cross examine the petitioner, if any oral evidence let in by him is already on record. At any rate, the Original Petition shall be reconsidered

and a fresh award shall be passed by the Tribunal within a period of two months from the date of receipt of a certified copy of this judgment by it.