

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 31ST JULY 2008 / 9TH SRAVANA 1930

MACA.No. 977 of 2006(B)

**OPMV.1201/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
NEYYATTINKARA**
.....

APPELLANT/1ST RESPONDENT:

**S. JAYAKUMAR,
THANPONNAMKALA MEKKUNADA PUTHEN VEEDU,
KANJIRAMKULAM P.O., NEYYATTINKARA.**

BY ADV. SRI.G.SUDHEER

RESPONDENTS: APPLICANTS & 2ND RESPONDENTS:

**1. SUKUMARAN, S/O. RAGHAVAN,
NAGAROODAMKETTIYA COLONY, KARUMKULAM,
PULLAVILA P.O., NEYYATTINKARA.**

**2. VIKRAMAN, S/O. RAGHAVAN,
NAGAROODAMKETTIYA COLONY, KARUMKULAM,
PULLAVILA P.O., NEYYATTINKARA.**

**3. THE DIVISIONAL MANAGER,
UNITED INDIA INSURANCE CO. LTD.,DIVISIONAL OFFICE,
THIRUVANANTHAPURAM.**

BY ADV. SRI.JOHN JOSEPH VETTIKAD FOR R3

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 31/07/2008, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

M.N. KRISHNAN, J.

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M.A.C.A. NO. 977 OF 2006

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Dated this the 31st day of July, 2008.

J U D G M E N T

This appeal is preferred against the award of the Motor Accidents Claims Tribunal, Neyyattinkara in O.P.(MV) 1201/97. One Gowri mother of the applicants in the claim petition died in a road accident. According to the claimants it was the first respondent who was driving the vehicle. But the insurance company contended that it was driven by one Manju, the sister of the first respondent who did not have a valid driving licence. Therefore the Tribunal on an analysis came to the conclusion that Manju had driven the vehicle and that the vehicle had been driven by a person without a driving licence and therefore directed the insurance company to pay the amount and get it reimbursed from the first respondent.

2. When a claim petition is filed specifically alleging that it was the first respondent who had driven the vehicle the Tribunal should have directed its finding only on that

point and not to find that somebody else had driven and therefore there is breach of policy condition and so reimbursement has to be ordered. A person cannot be found fault with even without impleading him or her as a party and the finding of a Court against a person without that person on the party array is not binding on that party and when it is so further consequential orders cannot be passed by any competent Court of law. I think the applicant or the insurance company or somebody should have raised the contention and an issue could have been framed and if Manju is impleaded, the Court could have adjudicated the question and then decided the issue. Or in other words, if it has not impleaded anybody, the Court should have at least on the finding that somebody else had driven the vehicle non suited the claimants. But unfortunately without Manju being in the party array a finding is arrived that she had driven the vehicle and that she did not have a valid driving licence and therefore there is breach of policy condition and the insurance company is entitled to get reimbursement. This

finding cannot be sustained without her juncture. Therefore I set aside the award passed by the Tribunal and direct the insurance company or the claimant as the case may be or even the first respondent to file an application for impleading of Manju and after she is impleaded the matter be heard, give an opportunity to her and final award be passed. When such a final award is passed the entitlement of the insurance company to get it reimbursed on the ground of breach of policy condition also has to be specifically stated by the Tribunal. Parties are directed to appear before the Tribunal on 4.9.08.

M.N. KRISHNAN, JUDGE.

ul/-