

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 29TH OCTOBER 2010 / 7TH KARTHIKA 1932

MACA.No. 3190 of 2009()

OPMV.1808/2002 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR

APPELLANT / 3RD RESPONDENT :

THE ORIENTAL INSURANCE CO. LTD.,
KODUNGALLUR, REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, ERNAKULAM NORTH,
KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT / CLAIMANT :

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1. BIJU PAUL, S/O. PAUL,
KOMBARAKKARAN HOUSE, CHUNGAM, P.O.AYYANTHOLE,
THRISSUR DISTRICT-680 003.
 2. K.M.JALEEL,
KADAVIL HOUSE, P.O.PANANGAD, KODUNGALLUR,
THRISSUR DISTRICT.
 3. SAJITH K.V., S/O. VELUKUTTY K.V.,
KADAVIL HOUSE, GANAPATHY AGRAHARAM,
POONKUNNAM P.O., THRISSUR DISTRICT.

R1 BY ADV. SRI.K.N.PADMAKUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 29/10/2010, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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M.N. KRISHNAN, J.

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M.A.C.A.NO.3190 OF 2009
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Dated this the 29th day of October, 2010.

J U D G M E N T

This is an appeal preferred against the award of the Claims Tribunal, Thrissur in OP(MV)No.1808/2002. The claimant, who was a pillion rider in a vehicle, sustained injuries in a road accident. The Tribunal awarded him a compensation of Rs.31,850/= and repelled the contention of the insurance company regarding exoneration of liability. It is against that decision the insurance company has come up in appeal.

2. Heard the learned counsel for the appellant as well as the claimant/respondent. Admittedly the vehicle was covered only by an Act only policy. But it is seen from the document that a capital sum insurance of Rs.42,000/= for two persons is done by receiving a premium of Rs.63/= apart from other premium like liability to public risk.

3. Now it is contended that it will be applicable only when there is permanent disability or disability as enumerated in the conditions of the policy. The Tribunal

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found that without production of conditions of the policy it cannot be considered and therefore rejected the contention of the insurance company. So there are circumstances under which this Rs.42,000/= can be paid will depend upon the conditions of the policy. The Tribunal without giving any reason had rejected the disability certificate produced by the claimant as well. Since there is interconnectivity between the permanent disability and the insurance coverage, it is necessary to consider both the aspects together.

4. Therefore the claimant is given an opportunity to prove the disability as well. The award under challenge is set aside and the matter is remitted back to the Tribunal for consideration of the question whether there is permanent disability for the claimant and secondly whether the terms and conditions of the policy cover the risk of the person though it is an Act only policy. For this purpose, parties are permitted to adduce both documentary as well as oral evidence in support of their respective contentions and then dispose of the matter in accordance with law. Parties are directed to appear before the Tribunal on 17.12.2010.

Disposed of accordingly.

M.N. KRISHNAN, JUDGE.

M.A.C.A.NO.3190 OF 2009 : 3 :

M.A.C.A.NO.3190 OF 2009 : 4 :

M.N. KRISHNAN, J.

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A.S.NO.389 OF 2001

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8th day of October, 2010.

J U D G M E N T