

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 30TH DAY OF JUNE 2017/9TH ASHADHA, 1939

MACA.No. 937 of 2011 ()

AGAINST THE AWARD IN OPMV 32/2006 of M.A.C.T OTTAPPALAM DATED 14-10-2010

APPELLANT/APPELLANT/2ND RESPONDENT.:

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

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT(S)/RESPONDENTS/CLAIMANTS.:

1. SURESH GUPTHAN, S/O.GOPALAKRISHA
GUPTHAN, RESIDING AT RAVI MANDIR,, KADAMAPZHIPURAM
VILLAGE, OTTAPALAM TALUK,, OTTAPALAM P.O., PIN 679 120.
2. GOPINATHAN M.N., S/O.NARAYANA GUPTHAN,
MELEPURATH VEEDU, PULAPATTA P.O.,, PIN-678 632,
PALAKKAD TALUK.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 30-06-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.D.RAJAN, J

.....
M.A.C.A.937 OF 2011
.....

Dated 30th June, 2017

JUDGMENT

This appeal is preferred against the award in O.P (MV) No.32 of 2006 of MACT, Ottapalam by the insurer. First respondent in this appeal sustained injuries in a motor accident on 07.04.2005 while travelling as a passenger in a private car KL/2E 7303. The driver of the car was rash and negligent and the vehicle hit against the divider and first respondent sustained injuries. Immediately he was removed to hospital. First respondent and other passengers in the private car approached the Tribunal and both cases were disposed of by a common award. A sum of Rs.32,100/- was awarded in favour of the first respondent injured and another Rs.15,400/- was awarded to the injured in O.P.(MV)No. 31 of 2006. Appellant was directed to satisfy the award. Being aggrieved by that, he preferred this appeal.

2. Learned counsel appearing for the appellant contended that the injured is a gratuitous passenger in a private vehicle and extra premium was not collected from the owner to indemnify the liability. As per the common award dated 03.12.2008, he preferred MFA Nos.1849 of 2009 and

1851 of 2009 and this court set aside the award and remitted the matter to the Tribunal for fresh consideration.

3. It is true that the passenger in a private car sustained injuries and additional premium was collected by the appellant under the policy. The amount awarded by the Tribunal is a meagre amount which will not come above the coverage under the policy. The liability of the company towards the owner is limited to Rs.2,00,000/- and for others, nothing is mentioned in Ext.B1. In view of the decision in **Mathew V. Shaji** (2009(3) KLT 813) unlimited liability cannot be fastened upon the Insurance Company since the company issued only an Act only policy. In the Tribunal, injured produced Ext.A1 to A12. From the side of the appellant, Ext.B1 to B3 were marked. After remand, RW1 was examined. In this context, I have perused the copy of the policy. Ext.B1 is the copy of the policy in which additional premium was collected by the appellant. Extra additional premium of Rs.100/-, Rs.250/- for covering the liability of the driver, Rs.25/- and extra loading Rs.210/- were collected by the appellant. A perusal of Ext.B1 shows that appellant received the additional premium and he is liable to pay compensation.

When additional premium is collected, appellant cannot take a contention that the first respondent injured is a gratuitous passenger and no extra premium was collected from the owner to indemnify the claim. Hence the award of the Tribunal is confirmed, there is no merit in this appeal and it is accordingly dismissed.

P.D.RAJAN, JUDGE

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