

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

SATURDAY, THE 30<sup>TH</sup> DAY OF SEPTEMBER 2023 / 8TH ASWINA, 1945

MACA NO. 2476 OF 2010

OPMV 359/2006 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD  
APPELLANT/3RD RESPONDENT

UNITED INDIA INSURANCE CO.LTD.  
PAYYANNUR BRANCH, REPRESENTED BY THE BRANCH MANAGER.  
BY ADV SRI.RAJAN P.KALIYATH

RESPONDENTS/CLAIMANTS 1 TO 3 AND R1, 2 AND 4

- 1 DEEPA WILSON AND OTHERS, AGED 29 YEARS  
W/O.LATE WILSON, RESIDING AT CHIRAYATH HOUSE,,  
OATTEMALAM, VALLIKKADAVU, MALOM VILLAGE, HOSDURG  
TALUK, KASARGOD DISTRICT.
- 2 VIPIN WILSON, AGED 8 YEARS (MINOR)  
S/O.LATE WILSON (DOB-4.6.2002).
- 3 VINEETHA WILSON AGED 5 ½ YEARS (MINOR)  
D/O. LATE WILSON. (DOB-25.10.2004)., MINOR  
PETITIONERS 3&4 REPRESENTED BY THE NATURAL GUARDIAN  
AND MOTHER FIRST RESPONDENT DEEPA, WILSON,  
-DO-.
- 4 SURESH AGED ABOUT 30 YEARS  
S/O.KARUNAKARAN, RESIDING AT THAKIDIYAL HOUSE,,  
VALLIKADAVU POST, MALOM VILLAGE, PARAPPA VIA,,  
HOSDURG TALUK.
- 5 THE DIRECTOR GENERAL OF POLICE  
KERALA STATE, THIRUVANANTHAPURAM.
- 6 K.V.PRADAPAN, KIZHAKKEVEETIL  
PALLIKOVAL, KARIVELLUR, KANNUR DISTRICT.  
BY ADVS.  
K.V.SREE VINAYAKAN  
PP SRI.JACOB C.SIMON  
SRI.T.K.VIPINDAS - R1 TO R3  
SRI.ZUBAIR PULIKKOOL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP  
FOR ADMISSION ON 30.09.2023, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**ZIYAD RAHMAN A.A., J.**

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MACA 2476 of 2010  
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Dated : 30<sup>th</sup> September, 2023

### JUDGMENT

This appeal arises from the award dated 17.7.2010 in OP(MV).No.359/2006 on the files of the Motor Accident Claims Tribunal, Kasargod.

2. The said claim petition was submitted by respondents 1 to 3 herein, seeking compensation for the death of one Wilson due to the injuries sustained in a motor accident that occurred on 5.3.2004. The claim petition was submitted under Section 163A of the Motor Vehicles Act. According to the claimants, the accident occurred when the said Wilson was travelling in a jeep bearing registration No.KL/01 5181, driven by the 1<sup>st</sup> respondent in the claim petition, the 4<sup>th</sup> respondent herein. Due to the rash and negligent driving of the said respondent, the said vehicle capsized into a deep valley, and the deceased sustained serious injuries. Immediately, he was taken to Pariyaram Medical College, but on the way, he died. It was submitted that at the time of the accident, the vehicle was owned by the supplementary 4<sup>th</sup> respondent. The claim petition was submitted in

such circumstances under Section 163A of the Motor Vehicles Act.

3. The 1<sup>st</sup> respondent in the claim petition was set *ex parte*. The 2<sup>nd</sup> respondent, the Director General of Police, filed a written statement, contending that the 2<sup>nd</sup> respondent was not the actual owner of the vehicle. The vehicle involved in the accident was auctioned to one K.V.Pradeepan, the 4<sup>th</sup> respondent in the claim petition and the same was released to him on 26.7.2003. Thereafter, NOC to transfer the said vehicle was also issued to him. Subsequently, the said Pradeepan sold that vehicle to the deceased Wilson on 30.10.2003, and the registration certificate was transferred in the name of the deceased, as per order of the Additional Registering Authority, Kanhangad by order No.R2/2352/03 dated 10.11.2003. The 3<sup>rd</sup> respondent in the claim petition, the appellant herein, filed a written statement admitting the insurance coverage in respect of the vehicle. However, they disputed the liability on various grounds.

4. The 4<sup>th</sup> respondent submitted a written statement, contending that he was not the registered owner of the vehicle at the time of the accident. According to him, he purchased the said vehicle from a public auction conducted by the Police department and the registration of the vehicle was transferred to his name on 21.7.2003. Thereafter, he sold the said vehicle to the deceased Wilson, and the

transfer of the registration certificate was also affected before the accident.

5. Evidence in this case consists of Exts.A1 to A3 from the side of the claimants and from the side of the respondents in the claim petition, Exts.B1 to B5 were marked.

6. After the trial, the Tribunal came to the conclusion that at the time of the accident, the registered owner of the vehicle was the deceased himself. However, the Tribunal passed an Award allowing a total compensation of Rs.4,17,250/- and directed the appellant to deposit the said amount, along with interest, at the rate of 7.5% per annum from the date of petition till realization. This appeal is filed in such circumstances as being aggrieved by the Award.

7. Heard Sri.Rajan Kaliyath, learned counsel appearing for the appellant and Sri.T.K.Vipindas, learned counsel appearing for respondents 1 to 3.

8. The main contention put forward by the learned counsel for the appellant is that since it is found that the deceased was the owner of the vehicle at the relevant time, the claim petition under Section 163A of the Motor Vehicles Act is not maintainable. The learned counsel places reliance on the decision rendered by the Hon'ble Supreme Court in **Oriental Insurance Co. Ltd. v. Rajni**

**Devi (2008 (4) KLT 144 (SC) )**. The learned counsel for the respondents 1 to 3 opposed the aforesaid submission by pointing out that, according to him, the vehicle was owned by the supplementary 4<sup>th</sup> respondent in the claim petition.

9. However, after going through the materials placed on record, it is evident that at the time of the accident, the vehicle stood registered in the name of the deceased. The policy issued in respect of the vehicle also stood in the name of the deceased himself. In such circumstances, in the light of the principles laid down by the Hon'ble Supreme Court in **Rajni Devi's** case, no application could have been entertained by the Tribunal under Section 163(A) of the Motor Vehicles Act since the person liable to pay the compensation, was the registered owner himself. Therefore, he cannot claim compensation from himself. In such circumstances, I am of the view that the Award passed by the Tribunal directing the Insurance Company to deposit an amount of Rs.4,17,250/- with interest at the rate of 7.5% per annum is liable to be interfered with.

10. However, another aspect to be noticed in this case is that on going through Ext.B1 policy, it is seen that the coverage of policy includes compulsory 'personal accident coverage' to the owner driver, which comes to Rs.2,00,000/-. The Hon'ble Supreme Court in **Ramkhiladi v. United India Insurance Company (AIR 2020 SC**

**14)**, even though the claim under Section 163A was found to be not maintainable, taking note of the 'personal accident coverage' contemplated under the policy, the compensation to the extent of the amount covered by the 'Personal Accident Coverage', was granted to the driver of the vehicle. Thus, since the legal heirs of the deceased are entitled to the 'personal accident coverage' included in Ext.B1 policy to the extent of Rs.2,00,000/-, the same can be awarded in this case.

In such circumstances, the Award passed by the Tribunal dated 17.7.2010 in OP(MV).No.359/2006 by the Motor Accident Claims Tribunal, Kasargod, is hereby modified by limiting the compensation as Rs.2,00,000/- in the light of the 'personal accident coverage' contemplated under the Ext.B1 policy and the appellant is directed to deposit Rs.2,00,000/- along with interest at the rate as ordered by the Tribunal within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

**ZIYAD RAHMAN A.A, Judge**