

**Selvaraj vs Harinarayanan K.**

**Selvaraj vs Harinarayanan K.**

**SooperKanoon Citation :** [sooperkanoon.com/1292761](https://sooperkanoon.com/1292761)

**Court :** Kerala

**Decided On :** Jul-10-2024

**Judge :** Honourable Mr.Justice Ziyad Rahman a.a.

**Appeal No. :** MACA/607/2009

**Appellant :** Selvaraj

**Respondent :** Harinarayanan K.

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946  
MACA NO. 2981 OF 2008 AGAINST THE AWARD DATED 04.09.2008  
IN OPMV NO.861 OF 2005 OF MOTOR ACCIDENT CLAIMS  
TRIBUNAL, OTTAPPALAM APPELLANT/S: NEW INDIA ASSURANCE  
CO. LTD. J.R.J.COMPLEX, OTTAPALAM - 679 101., REPRESENTED  
BY ITS MANAGER, REGIONAL OFFICE,, KANDAMKULATHY  
TOWERS, M.G.ROAD, ERNAKULAM. SEBASTIAN  
VARGHESE(K/141/2000) RESPONDENT/S:

1 VASU @ VASUDEVAN AND OTHERS S/O.MUNDAN, KALLICHOLA HOUSE, MULANHUR P.O., OTTAPALAM TALUK, PALAKKAD DISTRICT. 2 HARINARAYANAN K. AGED 26 YEARS S/O.RAMANKUTTY, KANIYAMKUNNIMEL HOUSE, CHUNANGAD AMSOM AND DESOM,, OTTAPALAM TALUK, PALAKKAD DISTRICT. (DELETED) (R2 IS DELETED FROM THE ARRAY OF PARTIES AT THE RISK OF THE PETITIONER VIDE ORDER DATED 27/10/09 IN IA 3099/09) 3 C.NARAYANANKUTTY AGE NOT KNOWN CHAVATHAPARAMBIL HOUSE, PALAPPURAM,, OTTAPALAM - 3, PALAKKAD DISTRICT. R3 BY SRI.SANTHEEP ANKARATH FOR R1 BY SRI.R.VENUGOPAL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 0407.2024, ALONG WITH MACA.607/2009, 609/2009 AND CONNECTED CASES, THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981 /2008 and con.cases 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA NO. 607 OF 2009 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.860 OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALA APPELLANT/S: SELVARAJ S/O.BALAN @ BALASUBRAMANIAN, CHAKRAYATHIL HOUSE,, MULANHUR, OTTAPALAM, PALAKKAD DISTRICT. SRI.R.VENUGOPAL SRI.R.SREEHARI RESPONDENT/S:

1 HARINARAYANAN K. KANIYAMKUNNIMEL HOUSE, CHUNANGAD AMSOM, DESOM AND POST, OTTAPALAM TALUK., (DRIVER OF LORRY KL 11B 6189). 2 C.NARAYANANKUTTY CHAVATHAPARAMBIL HOUSE, PALAPPURAM,, OTTAPALAM-3., (OWNER OF LORRY KL 11B 6189). 3 THE NEW INDIA ASSURANCE CO.LTD. JRJ COMPLEX, OTTAPALAM-679 101., (INSURER OF KL

11B 6189 LORRY-POLICY, NO.761103/31/04/08887-, VALID FROM 21-12-2004 TO 20-12-2005). FOR R2 BY SRI.SANTHEEP ANKARATH R3 BY SEBASTIAN VARGHESE(K/141/2000)

THIS MOTOR ACCIDENT CLAIMS APPEAL BEEN FINALLY HEARD ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES, THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981 /2008 and con.cases 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA NO. 609 OF 2009 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.865 OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM APPELLANT/S: 1 RUGMINI W/O.LATE GANGADHARAN. 2 DHANALAKSHMI AGED 15 YEARS MINOR 3 DHANYA AGED 12 YEARS MINOR 4 DHANESH AGED 10 YEARS MINOR (MINORS 2 TO 4 ARE THE CHILDRED OF LATE, GANGADHARAN AND REP.BY THEIR GUARDIAN MOTHER, RUGMINI AND ALL ARE RESIDING AT, KALLAMPARAMBIL HOUSE, MULANHUR POST,, OTTAPALAM TALUK. SRI.R.VENUGOPAL SRI.R.SREEHARI RESPONDENT/S:

1 HARINARAYANAN K. KANIYAMKUNNIMEL HOUSE, CHUNANGAD AMSOM AND, DESOM, CHUNANGAD POST, OTTAPALAM, TALUK., (DRIVER OF LORRY KL 11B 6189). 2 C.NARAYANANKUTTY CHAVATHAPARAMBIL HOUSE, PALAPPURAM,, OTTAPALAM-3, PALAKKAD DISTRICT., (OWNER OF LORRY KL 11B 6189). 3 THE NEW INDIA ASSURANCE CO.LTD. JRJ COMPLEX, OTTAPALM., (INSURER OF LORRY KL 11B 6189-, POLICY NO.761103/31/04/08887-, VALID FROM 21- 12-2004 TO 20-12-2005). 4 LAKSHIMI AMMA M/S.LATE GANGADHARAN, KALLMPARAMBIL HOUSE,, MULANHUR, OTTAPALAM TALUK. (R4 EXPIRED,APPELLANTS 1 TO 4 ARE

RECORDED AS THE LEGAL HEIRS OF R4 AS PER ORDER DATED  
R2 BY SRI.SANTHEEP ANKARATH

MACA Nos.2981 /2008 and con.cases 4 R3 BY SEBASTIAN  
VARGHESE(K/141/2000) THIS MOTOR ACCIDENT CLAIMS APPEAL  
HAVING BEEN FINALLY HEARD ON 04.07.2024, ALONG WITH  
MACA.2981/2008 AND CONNECTED CASES, THE COURT ON  
10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981 /2008 and  
con.cases 5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946  
MACA NO. 611 OF 2009 AGAINST THE AWARD DATED 04.09.2008 IN  
OPMV NO.862 OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,  
OTTAPPALAM APPELLANT/S: RAJAGOPALAN S/O.GOPALAN,  
KUDAIKKATTIL HOUSE,, MULANHUR POST, OTTAPALAM TALUK,,  
PALAKKAD DISTRICT. SRI.R.VENUGOPAL SRI.R.SREEHARI  
RESPONDENT/S:

1 HARINARAYANAN K. KANIYAMKUNNIMEL HOUSE, CHUNANGAD  
AMSOM, DESOM AND POST, OTTAPALAM TALUK,, PALAKKAD  
DISTRICT., (DRIVER OF LORRY KL IIB 6189). 2  
C.NARAYANANKUTTY CHAVATHAPARAMBIL HOUSE,  
PALAPPURAM, OTTAPALAM-3, PALAKKA DISTRICT., (RC OWNER  
OF LORRY KL 11B 6189). 3 THE NEW INDIA ASSURANCE CO.LTD.  
JRJ COMPLEX, OTTAPALAM., (INSURER OF LORRY KL 11B 6189 -  
POLICY, NO.761103/31/04/08887, VALID FROM 21- 12-04 TO 20-12-  
05). R1 AND R2 BY SRI.SANTHEEP ANKARATH R3 BY  
SRI.SEBASTIAN VARGHESE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES,  
THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA  
NO. 612 OF 2009 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.864  
OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM

APPELLANT/S: 1 GOVINDANKUTTY(DIED)& 2 OTHERS 2 SANTHAKUMARI,  
W/O.LATE GOVINDANKUTTY AGED 42 YEARS, CHOOZHICKATTIL HOUSE,  
MULANHUR, OTTAPALAM TALUK, PALAKKAD DISTRICT 3 RAJENDRAN,  
S/O.LATE GOVINDAN KUTTY, AGED 18 YEARS, CHOOZHICKATTIL  
HOUSE,MULANHUR, OTTAPALAM TALUK, PALAKKAD DISTRICT.  
SRI.R.VENUGOPAL SRI.R.SREEHARI RESPONDENT/S:

1 HARINARAYANAN.K & OTHERS KANIYAMKUNNIMEL HOUSE,  
CHUNGGAD POST,, OTTAPALAM TALUK (DRIVER OF LORRY KL 11  
B 6189) 2 C. NARAYANAKUTTY CHAVATHAPARAMBIL HOUSE  
PALAPPURAM, OTTAPPALAM-3, PALAKKAD DIST. 3 THE NEW INDIA  
ASSURANCE CO. LTD. J R J COMPLEX, OTTAPALAM, FOR R1 AND  
R2 BY SRI.SANTHEEP ANKARATH R3 BY SHRI.SEBASTIAN  
VARGHESE(K/141/2000)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES,  
THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981  
/2008 and con.cases 7

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA  
NO. 678 OF 2009 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.866

OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM  
APPELLANT/S: RAMACHANDRAN CHAPPILA, CHAKARAVATHIL HOUSE,,  
MULANHUR, OTTAPALAM TALUK, PALAKKAD. SRI.R.VENUGOPAL  
SRI.R.SREEHARI RESPONDENT/S: 1 HARINARAYANAN.K  
KHANIYAMKUNNIMEL HOUSE, CHUNANGAD,, AMSOM DESOM AND POST,  
OTTAPALAM, 2 C. NARAYANANKUTTY CHAVATHAPARAMBIL HOUSE  
PALAPPURAM, OTTAPALAM -3 3 THE NEW INDIA ASSURANCE CO. LTD.  
J.R.J. COMPLEX, OTTAPALAM. R1 AND R2 BY SRI.SANTHEEP ANKARATH  
R3 BY SEBASTIAN VARGHESE(K/141/2000) THIS MOTOR ACCIDENT CLAIMS  
APPEAL HAVING BEEN FINALLY HEARD ON 04.07.2024, ALONG WITH  
MACA.2981/2008 AND CONNECTED CASES, THE COURT ON 10.07.2024  
DELIVERED THE FOLLOWING: MACA Nos.2981 /2008 and con.cases 8

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA  
NO. 684 OF 2009 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.868  
OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM  
APPELLANT/S: SETHUMADHAVAN S/O. NARAYANAN, EZHUTHACHAN,  
VADAKKEKARA HOUSE,, CHERUMUNDASSERY POST, OTTAPALAM TALUK,,  
PALAKKAD DISTRICT. SRI.R.VENUGOPAL SRI.R.SREEHARI  
RESPONDENT/S:

1 HARINARAYANAN.K. KANIYAMKUNNIMEL HOUSE, CHUNANGAD  
AMSOM,, DESOM AND POST, OTTAPALAM TALUK., (DRIVER OF  
LORRY KL-11/B 6189) 2 C.NARAYANANKUTTY  
CHAVATHAPARAMBIL HOUSE, PALAPPURAM, OTTAPALAM-3., (RC  
OWNER OF LORRY KL-11/B 6189) 3 THE NEW INDIA ASSURANCE  
CO. LTD. JRJ COMPLEX, OTTAPALAM-679 101., (INSURER OF KL-  
11/B 6189 LORRY - INSURANCE POLICY, NO.761103/31/04/08887  
VALID FROM 21.12.04 TO, 20.12.2005). FOR R2 BY SRI.SANTHEEP  
ANKARATH R3 BY SEBASTIAN VARGHESE(K/141/2000)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES, THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981 /2008 and con.cases 9

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA NO. 771 OF 2009 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.863 OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM  
APPELLANT/S: SANKARANARAYANAN S/O.SANKARAN, THOTTATHIL HOUSE,, MULANHUR POST, OTTAPPALAM TALUK,, PALAKKAD DISTRICT.  
SRI.R.VENUGOPAL SRI.R.SREEHARI RESPONDENT/S:

1 HARINARAYANAN K & OTHERS KANIYAMKUNNIMEL HOUSE, CHUNANGAD, AMSOM AND DESOM, CHUNANGAD POST,, OTTAPALAM TALUK, PALAKKAD DISTRICT, (DRIVER OF LORRY NO. KL 11B 6189). 2 C.NARAYANANKUTTY CHAVATHAPARAMBIL HOUSE, PALAPPURAM, OTTAPALAM - 3., (RC OWNER OF LORRY KL 11B 6189). 3 THE NEW INDIA ASSURANCE CO.LTD. J R J COMPLEX, OTTAPALAM - 1., (INSURER OF KL 11B 6189 LORRY - POLICY NO., 761103/31/04/08887 - VALID FROM, 21-12-04 TO 20-12-05). R3 BY SEBASTIAN VARGHESE(K/141/2000) R2 BY SRI.SANTHEEP ANKARATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES, THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981 /2008 and con.cases 10

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA  
NO. 772 OF 2009 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.861  
OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM  
APPELLANT/S: VASU @ VASUDEVAN S/O.MUNDAN, KALLICHOLA HOUSE,  
MULANHUR POST,, OTTAPALAM TALUK, PALAKKAD DISTRICT.  
SRI.R.VENUGOPAL SRI.R.SREEHARI RESPONDENT/S:

1 HARINARAYANAN K. KANIYAMKUNNIMEL HOUSE, CHUNANGAD  
AMSOM , DESOM, CHUNANGAD POST, OTTAPALAM TALUK,,  
PALAKKAD DISTRICT. (DRIVER OF KL 11 B 6189 LORRY). 2  
C.NARAYANANKUTTY CHAVATHAPARAMBIL HOUSE,  
PALAPPURAM, OTTAPALAM 3, PALAKKAD, DISTRICT., (C OWNER  
OF KL 11B 6189 LORRY). 3 THE NEW INDIA ASSURANCE CO.LTD.  
JRJ COMPLEX, OTTAPALAM, (INSURER OF KL 11B, 6189 LORRY-  
POLICY NO.761103/31-/04/08887-, VALID FROM 21- 12-2004 TO 20-  
12-2005. FOR R1 AND R2 BY SRI.SANTHEEP ANKARATH R3 BY  
SHRI.SEBASTIAN VARGHESE(K/141/2000)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES,  
THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981  
/2008 and con.cases 11

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA  
NO. 1278 OF 2009 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.867  
OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM  
APPELLANT/S: PADMANABHAN S/O. GOPALAN, THOTTATHIL HOUSE,  
MULANHUR,, OTTAPALAM TALUK, PALAKKAD DIST. SRI.R.VENUGOPAL  
SRI.R.SREEHARI RESPONDENT/S:



1 HARINARAYANAN.K. KANIYAMKUNNIMEL HOUSE, CHUNANGAD AMSOM, DESOM, AND POST, OTTAPALAM TALUK, (DRIVER OF LORRY KL 11B 6189) 2 C.NARAYANKUTTY CHAVATHAPARAMBIL HOUSE, PALAPPURAM, OTTAPALAM-3., (OWNER OF LORRY KL 11B 6189) 3 THE NEW INDIA ASSURANCE CO. LTD. JR COMPLEX, OTTAPALAM-679101, (INSURERE OF KL 11B 6189 LORRY- POLICY NO.761103/, 31/04/08887 VALID FROM 21-12-2004 TO 20-12-05. FOR R1 AND R2 BY SRI.SANTHEEP ANKARATH R3 BY SRI.SEBASTIAN VARGHESE(K/141/2000)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES, THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981 /2008 and con.cases 12

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA NO. 3021 OF 2008 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.867 OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM APPELLANT/S: NEW INDIA ASSURANCE COMPANY LTD. J.R.J. COMPLEX, OTTAPALAM 679 101, REPRESENTED, BY ITS MANAGER, REGIONAL OFFICE,, KANDAMKULATHY TOWERS, M.G.ROAD, ERNAKULAM. SEBASTIAN VARGHESE(K/141/2000) RESPONDENT/S:

1 PADMANABHAN THOTTATHIL HOUSE, MULANHUR P.O., OTTAPALAM TALUK,, PALAKKAD DISTRICT. 2 HARINARAYANAN.K [DELETED] AGED 26 YEARS, S/O.RAMANKUTTY, KANIYAMKUNNIMEL HOUSE,, CHUNANGAD AMSOM DESOM, OTTAPALAM TALUK,, PALAKKAD DISTRICT. 3 C.NARAYANANKUTTY AGE NOT KNOWN CHAVATHAPARAMBIL HOUSE, PALAPPURAM,, OTTAPALAM-3, PALAKKAD DISTRICT.

[NAME OF THE 2ND RESPONDENT IS DELETED FROM THE PARTY  
ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED  
27.10.2009 IN IA R3 BY SRI.SANTHEEP ANKARATH R1 BY  
SRI.R.VENUGOPAL SRI.R.SREEHARI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES,  
THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981  
/2008 and con.cases 13

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA  
NO. 3029 OF 2008 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.864  
OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM  
APPELLANT/S: NEW INDIA ASSURANCE COMPANY LTD. J.R.J. COMPLEX,  
OTTAPALAM 679 101, REPRESENTED BY ITS MANAGER, REGIONAL  
OFFICE, KANDAMKULATHY TOWERS, M.G.ROAD, ERNAKULAM. SEBASTIAN  
VARGHESE(K/141/2000) RESPONDENT/S:

1 GOVINDANKUTTY S/O. VELAPPAN, CHOOZHICKATTIL HOUSE,,  
MULANHUR P.O.,OTTAPALAM TALUK,, PALAKKAD DISTRICT. 2  
HARINARAYANAN.K. [DELETED] AGED 26 YEARS,  
S/O.RAMANKUTTY, KANIYAMKUNNIMEL HOUSE, CHUNANGAD  
AMSOM & DESOM,, OTTAPALAM TALUK, PALAKKAD DISTRICT. 3  
C.NARYANANKUTTY AGE NOT KNOWN CHAVATHAPARAMBIL  
HOUSE, PALAPPURAM,, OTTAPALAM-3, PALAKKAD DISTRICT.  
[NAME OF THE 2ND RESPONDENT IS DELETED FROM THE PARTY  
ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED  
27/10/2009 IN IA R3 BY ADV SRI.SANTHEEP ANKARATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES,

THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981 /2008 and con.cases 14

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA  
NO. 3043 OF 2008 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.865  
OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM  
APPELLANT/S: NEW INDIA ASSURANCE COMPANY LIMITED J.R.J.,  
COMPLEX, OTTAPALAM 679 101,, REPRESENTED BY ITS MANAGER,  
REGIONAL, OFFICE, KANDAMKULATHY TOWERS, M.G. ROAD,,  
ERNAKULAM. SEBASTIAN VARGHESE(K/141/2000) RESPONDENT/S:

1 RUGMINI AND OTHERS W/O. LATE GANGADHARAN,  
KALLAMPARAMBIL, HOUSE, MULANHUR P.O., OTTAPALAM TALUK,,  
PALAKKAD DIST. 2 DHANALEKSHMI AGED 11 YEARS (MINOR), D/O.  
LATE GANGADHARAN, KALLAMPARAMBIL, HOUSE, MULANHUR  
P.O., OTTAPALAM TALUK,, PALAKKAD DISTRICT, REPRESENTED  
BY MOTHER AND, NATURAL GUARDIAN NAMELY SMT. RUGMINI, 3  
DHANYA AGED 8 YEARS (MINOR), D/O. LATE GANGADHARAN,  
KALLAMPARAMBIL, HOUSE, MULANHUR P.O., OTTAPALAM TALUK,,  
PALAKKAD DISTRICT, REPRESENTED BY MOTHER AND, NATURAL  
GUARDIAN NAMELY SMT. RUGMINI, 4 DHANESH AGED 6 YEARS  
(MINOR),S/O. LATE GANGADHARAN, KALLAMPARAMBIL, HOUSE,  
MULANHUR P.O., OTTAPALAM TALUK,, PALAKKAD DISTRICT,  
REPRESENTED BY MOTHER AND, NATURAL GUARDIAN NAMELY  
SMT. RUGMINI, 5 HARINARAYANAN K. [DELETED] AGED 26 YEARS,  
S/O. RAMANKUTTY, KANIYAMKUNNIMEL, HOUSE, CHUNANGAD  
AMSOM & DESOM,, OTTAPALAM TALUK, PALAKKAD DIST.[VIDE  
ORDER DT.27.10.2009 IN I.A.NO.3098/09] 6 C.NARAYANANKUTTY  
AGE NOT KNOWN

MACA Nos.2981 /2008 and con.cases 15 CHAVATHAPARAMBIL HOUSE, PALAPPURAM,, OTTAPALAM -3, PALAKKAD DISTRICT. [NAME OF THE 5TH RESPONDENT IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED 27.10.2009 IN IA R6 BY SRI.SANTHEEP ANKARATH FOR R1 TO R4 BY SRI.R.VENUGOPAL THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES, THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981 /2008 and con.cases 16

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. WEDNESDAY, THE 10TH DAY OF JULY 2024 / 19TH ASHADHA, 1946 MACA NO. 3069 OF 2008 AGAINST THE AWARD DATED 04.09.2008 IN OPMV NO.862 OF 2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM APPELLANT/S: NEW INDIA ASSURANCE COMPANY LTD J.R.J.COMPLEX, OTTAPALAM-679 101,, REPRESENTED BY ITS MANAGER,, REGIONAL OFFICE, KANDAMKULATHY TOWERS,, M.G.ROAD, ERNAKULAM. SEBASTIAN VARGHESE(K/141/2000) RESPONDENT/S:

1 RAJAGOPALAN AND OTHERS S/O.GOPALAN, KUDAIKATTIL HOUSE,, MULANHUR P.O., OTTAPALAM TALUK,, PALAKKAD DISTRICT. 2 HARINARAYANAN.K. AGED 26 YEARS S/O.RAMANKUTTY, KANIYAMKUNNIMEL HOUSE, CHUNANGAD AMSOM AND DESOM,, OTTAPALAM TALUK, PALAKKAD DISTRICT. (DELETED) (R2 IS DELETED FROM THE ARRAY OF PARTIES AT THE RISK OF THE APPELLANT AS PER ORDER DATED 27/10/09 IN IA 3101/09) 3 C. NARAYANANKUTTY AGED NOT KNOWN CHAVATHAPARAMBIL HOUSE, PALAPPLURAM,, OTTAPALAM-3, PALAKKAD DISTRICT. R3 BY SRI.SANTHEEP ANKARATH R1 BY SRI.R.VENUGOPAL SRI.R.SREEHARI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04.07.2024, ALONG WITH MACA.2981/2008 AND CONNECTED CASES, THE COURT ON 10.07.2024 DELIVERED THE FOLLOWING: MACA Nos.2981 /2008 and con.cases 17

## **JUDGMENT**

[MACA Nos.2981/2008, 607/2009, 609/2009, 611/2009, . All these appeals are arising from a common

### **judgment passed in nine claim petitions preferred by the**

claimants in respect of death of one person and injuries sustained to eight persons in an accident that occurred on 31.05.2005. OP(MV)No.865/2005 (MACA No.609/2009) was filed by the legal heirs of the person who died in the said accident. M.A.C.A.Nos. 3021/2008, 3029/2008, respondent/Insurer challenging the awards passed in OP(MV)Nos.867/2005, 864/2005, 865/2005, 862/2005 and imposed upon them to pay the compensation at the first instance and to recover the said compensation from the registered owner of the vehicle. Even though there were nine claim petitions, only against five claim petitions, the Insurance Company filed appeals on the reason that, the amounts awarded in the other claim petitions were MACA Nos.2981 /2008 and con.cases 18 lesser than Rs.10,000/- and, therefore, there was no appeal contemplated under Section 173 of the Motor Vehicles Act. (The parties are hereinafter referred to on the basis of the respective ranks in the claim petition)

2. The common case of the claimants are as

follows: The accident occurred on 31.5.2005 at 8.30 a.m. when the injured persons along with the deceased person were travelling in a lorry bearing registration No.KL 11 B -6189 by standing on the platform over the granite stone loaded therein, due to the rash and negligent driving of the 1st respondent it capsized, thereby causing injuries to them. It resulted in the death of one person. The claim petitions were submitted seeking compensation. The 1st and 2nd respondents, the driver and owner of the vehicle submitted a written statement

contending that the claimants were travelling in the lorry as employees and representatives of the goods carried in the said vehicle as they were going to unload MACA Nos.2981 /2008 and con.cases 19 granite stones. They were not gratuitous passengers in a goods vehicle. The vehicle was covered with a valid policy and the driver of the vehicle was having a valid driving licence.

3. The 3rd respondent, the Insurer of the lorry,

submitted separate written statements in all the cases admitting the existence of a valid policy for the said vehicle. However, it was contended that, they were travelling on the platform of the lorry and they were gratuitous passengers carried in a goods vehicle. Therefore, it was contended that, the coverage of policy cannot be extended to such persons. Hence they sought for exoneration from the liability.

4. All the cases were tried together and the

evidence from the side of the claimants consists of oral evidence of PWs.1 to 3 and as documentary evidence, Exhibits A1 to A42 were marked. From the side of the respondents, RW1 was examined and Exts.B1 to B3 were marked. The case sheet from the hospital where the claimants were undergoing treatment was marked as MACA Nos.2981 /2008 and con.cases 20 Ext.X1. After the trial, the Tribunal came to the

### **conclusion that, all the injured persons and the**

deceased were travelling on the platform of the lorry over the granite stones loaded therein and therefore the Insurance Company is liable to pay the compensation at the first instance with a right to recover the said amounts from the registered owner of the said vehicle. Various amounts were awarded as compensation.

5. Seeking enhancement of compensation and also

challenging the findings of Tribunal that they were passengers travelling on the platform of the vehicle, appeals were submitted by the claimants. Challenging the liability imposed upon them, the insurer has submitted M.A.C.As referred to above.

6. Heard Sri. R.Sreehari, the learned counsel for the claimants in all the cases and Sri.Sebastian Varghese, the learned counsel appearing for the 3rd respondent/insurer.

7. Since the insurer has raised a specific

challenge against the liability imposed upon them to pay MACA Nos.2981 /2008 and con.cases 21 the compensation at the first instance, that question is to be decided first.

8. The specific contention raised by the learned

counsel for the 3rd respondent in this regard is that, even going by the pleadings in all the claim petitions, victims of the accident were travelling over the granite stones loaded in the goods vehicle and therefore they cannot be treated as passengers to whom the coverage of policy can be extended. On the other hand, the learned counsel for the claimants raised a contention that even though some of the victims were travelling over the granite stones carried in the said vehicle as contended by the learned counsel for the 3rd respondent, the deceased for whose death the compensation is claimed in OP(MV)No.865/2005 and the claim petitioner in OP(MV)No.867/2005 were travelling inside the cabin of the lorry and therefore, for them, compensation has to be granted by the insurer, without any recovery from the owner of the lorry. The learned counsel for the claimants placed reliance upon the oral evidence of PW1 MACA Nos.2981 /2008 and con.cases 22 and RW1 to substantiate the said contention. It was also pointed out that, even though the same was contrary to the pleadings in the claim petitions, according to him, in a claim petition under Section 166 of the Motor Vehicles Act, much emphasis need not be given to the pleadings of the parties as the proceedings under the same can be initiated even Suo motu.

9. I have carefully gone through the records. The

specific pleading made in all the claim petitions with respect to the description of the accident is that, it occurred when the persons concerned were travelling in the lorry by standing over the granite stones loaded in the said vehicle. Exhibit A1 is

the FIR and Ext.P4 is the final report submitted by the police in connection with the criminal case registered in respect of the accident. In the said documents also, the specific description of the accident is in tune with the pleadings of the parties referred to above. However, when PW2, the petitioner in OP(MV)No.867/2005 was examined, he put forward a completely different case. MACA Nos.2981 /2008 and con.cases 23 According to him, he, along with Gangadharan, the deceased for whose death compensation was sought in OP(MV)No.865/2005, were travelling inside the cabin along with the driver. RW1 was the driver of the said vehicle, who also specifically stated that, the said persons were along with him in the cabin when the accident occurred.

10. However, the crucial aspect to be noticed is

that, even in the claim petitions submitted by PW2 as OP(MV)No.867/2005, his specific pleading was that he was travelling along with the other injured by standing over the granite stone. In the claim petition seeking compensation for the death of the Gangadharan, the very same pleadings are made. Of course, it is true that, the learned counsel for the claimants by placing reliance upon the decisions rendered by the Honble Supreme Court in United India Insurance Company Ltd. v. Shila Datta and Others[(2011)10 SCC 509] and Sunita and Others v. Rajasthan State Road Transport Corporation and Another [(2020)13 SCC 486] pointed out that much emphasis need MACA Nos.2981 /2008 and con.cases 24 not be given to the pleadings in respect of the proceedings under Section 166 of the Motor Vehicles Act, However, the legal proposition laid down by the Honble Supreme Court in those cases cannot be made applicable to the facts of this case. Of course, there cannot be any doubt as to the proposition that the significance of the pleadings in a proceeding under Section 166 of the Motor Vehicles Act is much less. The said position is specifically laid down by the Honble Supreme Court in the decisions referred to above. However, the said legal proposition is in respect of situations where there were no specific pleadings to advance a particular case. In other words, what was laid down is that the lack of pleadings cannot defeat the legitimate right of a party in a claim under Section 166 of the Motor Vehicles Act. However, the cases before this Court are completely different. In all the claim petitions a specific pleading has been raised wherein a clear description has been



made with respect to the manner in which the accident occurred and the circumstances under which the MACA Nos.2981 /2008 and con.cases 25 same was happened. It is to the effect that the accident occurred when the victims of the accident were travelling on the granite stone carried in the lorry. As far as the evidence of PW2 and RW1 are concerned, their evidence is completely contrary to the pleadings. Lack of any pleading or lack of sufficient pleadings has to be distinguished from a case of contrary pleading. In this case, despite the fact that a specific description has been given as to the manner in which the accident occurred by way of pleadings in the claim petitions, the evidence sought to be adduced by those claimants is diametrically opposed to the said pleadings. This is completely different from the lack of pleadings, or lack of sufficient pleadings, and hence, the legal proposition laid down by the Honble Supreme Court in the above-referred decisions would not come to the rescue of the petitioners in such a situation. This is particularly because, the pleadings as to the description of the accident are fortified by the police records as evidenced by Exts. A1 and A4 as the MACA Nos.2981 /2008 and con.cases 26 description contained therein with regard to the accident was exactly similar to that of the pleadings in the claim petitions. Moreover, PW2 is a person who suffered injuries sustained in the accident and, therefore, he is an interested person and RW1 is also a person interested in the outcome of the claim Petition, being the driver of the vehicle who has to be loyal to his Master, the owner of the vehicle, upon whom the liability was supposed to be imposed upon. Therefore, when there are specific pleadings with regard to the description of the accident which is supported by the police report, I do not find any justifiable reason to accept the contrary version of the accident put forward by PW1 and RW1, who are interested witnesses, by discarding the specific pleadings. Therefore, I hold that the accident occurred when all the victims of the accident were travelling on the platform of the vehicle over the granite stone loaded in the lorry. Therefore, I do not find any ground to interfere with the findings entered into by the Tribunal in this regard. MACA Nos.2981 /2008 and con.cases 27

11. This conclusion would lead us to the next

question as to whether the imposition of liability to pay the amount of compensation upon the 3rd respondent/insurer at the first instance, is justifiable or not. Of course, the learned counsel for the claimants has vehemently contended by citing various decisions to the effect that, since it has come out in evidence that all the victims of the incident were carried in the said vehicle for loading and unloading purposes, they were the employees of the insured. Hence, they are entitled to get protection under Section 147(1)(c) of the Motor Vehicles Act, 1988, contends the learned counsel for the petitioners. They also placed reliance upon the decision rendered by this Court in MACA No.2281/2010 and National Insurance Company (M/s.) v. Mohammed Ali and Others [2012(4) KLT 633]. Of course, it is true that, by virtue of the said statutory provision, they can be treated as the persons employed by the insured. However, the crucial aspect to be noticed is that, that alone is not sufficient to hold that the insurer is liable to pay MACA Nos.2981 /2008 and con.cases 28 compensation, particularly since it has also come out that they were not travelling in the cabin of the said vehicle. The question in this regard is settled as per the Division Bench judgment rendered by this Court in New India Assurance Company Ltd. v. Alekutty Antony and Others [2009(4) KLT 130]. In the said decision, the question considered was whether the head load workers carried in a goods vehicle were entitled to get coverage of the policy. After discussing the various decisions including National Insurance Co.Ltd. v. Cholleti Bharatamma [(2008) 1 SCC 423], it was held that, even if they cannot be treated as gratuitous passengers, as they were engaged for the purpose of vehicle, the Insurance Company cannot be held responsible to such employees who were travelling on the platform of the said vehicle. In the said decision, several claim petitions were decided and it was held that, except in the case of one claim petition where the petitioner was travelling inside the cabin of the said vehicle, the other claim petitions were decided by holding that no MACA Nos.2981 /2008 and con.cases 29 liability can be fastened upon the insurer. In this case also, the factual situation is exactly the same as even though the victims of the accident were carried in the vehicle as employees, none of them were travelling inside the cabin but they were travelling on the platform of the vehicle which was never contemplated under the provisions of the Motor Vehicles Act. In such

**circumstances, the Insurance Company cannot be held**

responsible for any of the awards.

12. Therefore, the finding of the Tribunal in the common award in respect of all the claim petitions are hereby set aside.

13. In the light of the conclusion that has been

arrived at as above, the learned counsel for the petitioners, pressed his argument for enhancement of compensation in respect of M.A.C.A.No.1278/2009 only. The quantum of compensation in that case are as follows:

14. The appellant in this case was aged 44 years at

the time of the accident and was working as a head load worker with a monthly salary of Rs.7,500/-. Consequent MACA Nos.2981 /2008 and con.cases 30 to the accident, he sustained very serious injuries and as a result of the same, he availed in-patient treatment for 390 days in various spells. The injuries sustained resulted in physical disability which was certified by the Doctor as 25%, and Ext.A37 disability certificate was issued. The Doctor who issued the certificate was examined as PW3. From the deposition of PW3, it can be seen that the doctor clearly mentioned about the reasons on the basis of which assessment of 25% of compensation has been made. It is evident therefrom that, consequent to the injuries, the appellant suffered shortening of 1 c.m. of his right leg, malunited fracture both bone

(R) leg with bone loss, stiffness of both knee and both

ankle, mal-united fracture of tibia (L) leg, sensory impirement of right leg, 15cm of fibulectomy (fibula removed for grafting) etc. Despite the above, the Tribunal assessed the percentage of disability as 10%, which does not appear to be proper. Considering the nature of disabilities as described in Ext.A37, which is duly proved by PW3 when he was examined, I find that the MACA Nos.2981 /2008 and con.cases 31 percentage of disability certified therein can be accepted. Thus, 25% is taken for the said purpose.

15. The next aspect relates to the monthly income

of the appellant. He was a head load worker and the monthly income claimed was Rs.7,500/-. However, there is no evidence to substantiate the same. When considering the method of computation evolved from the principles laid down by the Honourable Supreme Court in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance co. Ltd .[2011 (13) SCC 236] and Syed Sadiq v. Divisional Manager, United India Insurance Co.[2014 (2) SCC 735] the monthly income of Rs.5,000/- can be fixed in this case being a reasonable amount. When the compensation is re-assessed with a revised monthly income of Rs.5,000/- and the percentage of disability as 25%, the amount would come to Rs.2,10,000/- ( $5000 \times 12 \times 14 \times 25 / 100$ ). The amount awarded by the Tribunal is Rs.27,000/- and after deducting the same, the additional compensation under the said head would come to Rs.1,83,000/-. MACA Nos.2981 /2008 and con.cases 32

16. Considering the fact that the appellant had

undergone in-patient treatment for a total period of 390 days at various spells, I deem it appropriate to grant compensation for loss of income for a period of one year. The amount I have already fixed as monthly income is Rs.5,000/-. Thus, the amount under the head loss of income would come to Rs.60,000/- ( $5000 \times 12$ ). The Tribunal already awarded Rs.15,000/- under the said head and thus, the additional amount would come to Rs.45,000/-.

17. As far as the compensation for pain and

suffering and loss of amenities are concerned, the Tribunal awarded a consolidated sum of Rs.25,000/- alone. Considering the nature of injuries, prolonged treatment and the disabilities suffered by the appellant, I am of the view that, some enhancements are to be granted under both the heads. Considering the materials available on record, I deem it appropriate to grant a further sum of Rs.30,000/- each under both the heads. Thus, the total additional compensation is MACA Nos.2981 /2008 and con.cases 33 determined as Rs.2,88,000/- In the result, all these appeals are disposed of with the following findings: i) The 3rd respondent in the claim petitions is exonerated from the liability. ii) The compensation awarded in the respective claim petitions can be recovered by the petitioners from the 2nd respondent. iii) The quantum of compensation in

OP(MV)No.867/2005 is modified by granting an additional compensation of Rs.2,88,000/-[Rupees Two Lakhs Eightyeight thousand only] with interest at the rate as ordered by the Tribunal and proportionate cost. The said amount can also be recovered by the appellant therein from the 2nd respondent. Sd/- ZIYAD RAHMAN A.A. JUDGE pkk

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**