

Jose Phillip vs Raveendran

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SooperKanoon Citation : sooperkanoon.com/1318392

Court : Kerala

Decided On : Feb-01-2024

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

Appeal No. : MACA/3864/2023

Appellant : Jose Phillip

Respondent : Raveendran

Judgement :

MACA.No.3836/23 & Conns. 1 MACA NO. 3836 OF 2023 AGAINST THE ORDER/JUDGMENT OPMV 1011/2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALA APPELLANTS/2ND RESPONDENTS: JOSE PHILLIP, AGED 75 YEARS, S/O.PHILLIP, KAVUNNUKATTIL HOUSE, KIDANGOOR SOUTH P.O, KOTTAYAM, PIN - 686 583. BY ADVS. MATHEW JOHN (K) ABY J AUGUSTINE RESPONDENTS/RESPONDENTS/1ST AND 3RD RESPONDENTS: 1 RAVEENDRAN, S/O.GOPALAN, VALLOPPALLIL, ASHA BHAVAN HOUSE, KADAPPOOR KARA, KANAKKARY VILLAGE, KOTTAYAM, PIN - 686 631. 2 THE NATIONAL INSURANCE CO.LTD., REPRESENTED BY ITS DIVISIONAL MANGER, KOTTAYAM, PIN - 686 001. BY ADVS.GEORGE A.CHERIAN, SC ARATHI PRABHAKARAN(K/001158/2022)

ADMISSION ON 01.02.2024, ALONG WITH MACA Nos.3568/2020, 495/2023 AND 3864/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA.No.3836/23 & Conns. 2 MACA NO. 3568 OF 2020 AGAINST THE ORDER/JUDGMENT OPMV 1026/2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALA APPELLANT/1ST RESPONDENT.: RAVEENDRAN, AGED 52 YEARS, S/O.GOPALAN, VALLOPALLIL (ASHA BHAVAN) HOUSE, KADAPPOOR P.O., KANAKKARY VILLAGE, KOTTAYAM DIST. - 686 631. BY ADV.JOSEPH T.JOHN RESPONDENTS/PETITIONER AND RESPONDENTS 2 AND 3:

1 BALU MOHAN,S/O.MOHANAN NAIR, SREE SAILAM HOUSE, SH MOUNT P.O., KOTTAYAM - 686 006. 2 JOSE PHILIP, S/O.PHILIP, KAVUNNUKATTIL HOUSE, KIDANGOOR SOUTH P.O., KOTTAYAM DISTRICT - 686 583. 3 THE NATIONAL INSURANCE CO.LTD., REPRESENTED BY ITS DIVISIONAL MANAGER, KOTTAYAM, KOTTAYAM DISTRICT - 686 002. BY MVTHAMBAN(T-12)BY ADVS.R.REJI THARA THAMBAN(T-209) B.BIPIN(K/297/2007) ARUN BOSE(K/140/2013) R3 BY SRI.GEORGE A.CHERIAN, SC SRI.ALEXY AUGUSTINE

ADMISSION ON 01.02.2024, ALONG WITH MACA Nos.3836/2023, 495/2023 AND 3864/2023,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA.No.3836/23 & Conns. 3 MACA NO. 495 OF 2023 AGAINST THE ORDER OPMV 1011/2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALA APPELLANT/1ST RESPONDENT: RAVEENDRAN,AGED 52 YEARS, S/O.GOPALAN, VALLOPALLIL (ASHA BHAVAN) HOUSE, KADAPPOOR P.O., KANAKKARY VILLAGE, KOTTAYAM DIST-686 631. BY ADV.JOSEPH T.JOHN RESPONDENTS/PETITIONER AND RESPONDENTS 2 AND 3: 1 RAHUL, S/O.VIJAYAN, PERUMBALLIL HOUSE, MANTHADY KAVALA BHAGAM, KIDANGOOR SOUTH KARA, KIDANGOOR SOUTH VILLAGE, KOTTAYAM-686 583. 2 JOSE PHILIP,S/O.PHILIP, KAVUNNUKATTIL HOUSE, KIDANGOOR SOUTH P.O., KOTTAYAM

DISTRICT-686 583. 3 THE NATIONAL INSURANCE CO.LTD.,REPRESENTED BY ITS DIVISIONAL MANAGER, KOTTAYAM, KOTTAYAM DISTRICT- 686 002. BY ADVS.R.REJI M.V.THAMBAN(T-12) THARA THAMBAN(T-209) B.BIPIN(K/297/2007) ARUN BOSE(K/140/2013) R3 BY ADV. GEORGE A.CHERIYAN, SC ADMISSION ON 01.02.2024, ALONG WITH MACA Nos.3836/2023,3568/2020 and 3864/2023,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA.No.3836/23 & Conns. 4 MACA NO. 3864 OF 2023 AGAINST THE ORDER/JUDGMENT OPMV 1026/2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALA APPELLANT/2ND RESPONDENT: JOSE PHILLIP,AGED 75 YEARS, S/O.PHILLIP, KAVUNNUKATTIL HOUSE, KIDANGOOR SOUTH P.O, KOTTAYAM - 686 583. BY ADVS.MATHEW JOHN (K) ABY J AUGUSTINE RESPONDENT/1ST RESPONDENT: 1 RAVEENDRAN,S/O.GOPALAN, VALLOPPALLIL, ASHA BHAVAN HOUSE, KADAPPOOR KARA, KANAKKARY VILLAGE, KOTTAYAM, PIN - 686 631.

2 NATIONAL INSURANCE CO.LTD., REPRESENTED BY ITS DIVISIONAL MANAGER, KOTTAYAM, PIN - 686 001. BY ADVS.GEORGE A.CHERIAN, SC ARATHI PRABHAKARAN(K/001158/2022) ADMISSION ON 01.02.2024, ALONG WITH MACA Nos.3836/2023, FOLLOWING: MACA.No.3836/23 & Conns. 5

JUDGMENT

[MACA Nos.3836/2023, 3568/2020, 495/2023, 3864/2023] ... All these appeals arise from a common award passed in O.P.(MV).Nos.1026 of 2010 and 1011 of 2010 by the Motor Accidents Claims Tribunal, Pala. M.A.C.A.No.3568 of 2020 and M.A.C.A.No.495 of 2023 were filed by the 1 st respondent, the driver of the vehicle involved in the accident, whereas M.A.C.A.No.3836 of 2023 and M.A.C.A.No.3864 of 2023 were filed by the 2nd respondent, the registered owner of the said vehicle.

2. The claim petition was filed by the respective

claimants, seeking compensation for the injuries sustained to them in a motor accident that occurred on 07.10.2010. The vehicle was insured with the 3rd respondent in the claim petition. The grievance of the appellants is confined to the right of the recovery granted to the 3rd respondent in the award passed by the Tribunal, on the ground that the 1st respondent was driving the vehicle, which was a jeep bearing registration No.KL-35-AMACA.No.3836/23 & Conns. 6 2857, without valid driving licence.

3. The Tribunal found that, as the 1st respondent was not

having a badge authorizing him to drive the the transport vehicle and therefore, there was violation of conditions. The right of recovery was granted to the 3rd respondent in the claim petition in such circumstances.

4. In compliance of the award, the 3rd respondent/insurer

deposited the compensation awarded by the Tribunal in both the claim petitions and revenue recovery proceedings were initiated against the appellants in these appeals. These appeals were submitted in such circumstances.

5. Heard Sri.Joseph T.John, learned counsel for the

appellant in M.A.C.A.No.495 of 2023 and M.A.C.A.No.3568 of 2020, Sri.Mathew John K., learned counsel for the appellants in M.A.C.A.No.3836 of 2023 and 3864 of 2023 and Sri.George A.Churian, learned counsel for the insurer of the said vehicle.

6. The only contention raised by the learned counsel

appearing for the appellants is to the effect that, the issue raised by them is covered in their favour as per the principles laid down MACA.No.3836/23 & Conns. 7 by the Honourable Supreme Court in Mukund Dewangan v. Oriental Insurance Company Ltd [2017(3) KLT 1000]. It is to be noted that in the said decision, the Honourable Supreme Court held that in respect of vehicles with unladen weight less than 7500 kilo grams, lack of authorization to drive the transport vehicle cannot be treated as violation of the policy conditions enabling

the insurer to get reimbursement of the compensation.

7. In these cases, the driving licence of the 1st

respondent in the claim petitions, the driver of the vehicle, is already produced and marked as Ext.B2. On perusal of the same, it is seen that, the 1st respondent in the claim petition was having a valid licence to drive any light motor vehicle in the non-transport category and the vehicle involved in these cases was a jeep, a light motor vehicle, even though it was a transport vehicle. Therefore, in the light of the observations made by the Honourable Supreme Court in Mukund Dewangan (supra) lack of authorization to drive the transport vehicle cannot be treated as a ground to permit the insurer to recover the compensation from the driver and the owner. Accordingly, the MACA.No.3836/23 & Conns. 8 contentions raised by the appellants are to be accepted. In the result, all these appeals are allowed. The common award passed by the Motor Accidents Claims Tribunal, Pala in O.P.(MV).Nos.1011 of 2010 and 1026 of 2010 are hereby set aside to the extent it permitted the 3rd respondent in the claim petition to recover the amount of compensation from the 1st and 2nd respondents in the claim petition who are the appellants in these appeals. Sd/- ZIYAD RAHMAN A.A. JUDGE DG/1.2.24

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