

Commanding Officer vs Joseph.P.N.

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SooperKanoon Citation : sooperkanoon.com/1771181

Court : Kerala

Decided On : Jul-23-2020

Judge : Honourable Mr.Justice K.Vinod Chandran

Appeal No. : MACA/2311/2012

Appellant : Commanding Officer

Respondent : Joseph.P.N.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN
THURSDAY, THE 23RD DAY OF JULY 2020 / 1ST SRAVANA, 1942
MACA.No.2073 OF 2008(C) AGAINST THE AWARD IN OPMV
1467/2002 DATED 28-01-2008 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL ALAPPUZHA APPELLANT: THE NEW INDIA ASSURANCE
COMPANY LTD. ALLEPPEY NOW REPRESENTED BY ITS
MANAGER,, REGIONAL OFFICE, M.G.ROAD, KOCHI-11. BY ADVS.
SRI.MATHEWS JACOB (SR.) SRI.P.JACOB MATHEW
RESPONDENTS:

1 JOSEPH P.N. S/O NASARIUS, PANACHIKAL, WARD NO.2, PUNNAPRA SOUTH PANCHAYATH,, ALAPPUZHA. 2 MATHEW P.J. S/O. JOSEPH DO. DO. 3 CICILY D/O. JOSEPH DO. DO. 4 N.B. RAJENDRAN S/O. NARAYANAN, PREETHI NIVAS, PAZHAVEEDU, ALAPPUZHA. 5 COMMANDING OFFICER II BATALIAN - II(K) B.N., N.C.C., ALAPPUZHA. 6 GEORGE S/O. AVIRA NEDIYAKALAYIL VEEDU WARD NO.3, PALAPPALLY, VARANTHARAPPALLY,, THRISSUR DISTRICT. 7 THE MANAGING DIRECTOR KSRTC THIRUVANANTHAPURAM. 8 BALAKRISHNAN SO. GOVINDAKURUP BALARAGOM, KALARCODE, ALLEPPEY.

R5 BY ASSISTANT SOLICITOR GENERAL R5 BY SRI. JAISHANKAR V. NAIR, CGC R7 BY ADV. SRI. P. C. CHACKO, SC, KERALA STATE ROAD TRANSPORT CORPN. THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 23.07.2020, ALONG WITH MACA.2311/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN THURSDAY, THE 23RD DAY OF JULY 2020 / 1ST SRAVANA, 1942 MACA.No.2311 OF 2012 AGAINST THE AWARD IN OPMV 1467/2002 DATED 28-01-2008 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ALAPPUZHA APPELLANT/S: COMMANDING OFFICER 11 KERALA BATTALION N.C.C. ALAPPUZHA. BY ADVS. SHRI. P. VIJAYAKUMAR, ASG OF INDIA SRI. JAISHANKAR V. NAIR, CGC RESPONDENT/S: 1 JOSEPH. P. N. S/O. NASARIUS, PANACHIKAL WARD NO.2, PUNNAPRA SOUTH PANCHAYATH, ALAPPUZHA DISTRICT. 688004 2 MATHEW. P. J. S/O. JOSEPH, PANACHIKAL WARD NO.2, PUNNAPRA SOUTH PANCHAYATH, ALAPPUZHA DISTRICT. 688004 3 CICILY D/O. JOSEPH, PANACHIKAL WARD NO.2, PUNNAPRA SOUTH PANCHAYATH, ALAPPUZHA DISTRICT. 688004 4 N.B. RAJENDRAN S/O. NA. NARAYANAN, PREETHI NIVAS, PAZHAVEEDU,

ALAPPUZHA.688009

5 GEORGE S/O. AVIRAH, NEDIYAKALAYIL VEEDU, WARD NO.3, PALAPPALLY, VARANTHARAPPALLY PANCHAYATH, VARANTHARAPPALLY VILLAGE, THRISSUR DISTRICT. 6 MANAGING DIRECTOR KSRTC THIRUVANANTHAPURAM.695001 7 NATIONAL INSURANCE COMPANY LTD. REPRESENTED BY ITS BRANCH MANAGER, DIVISIONAL OFFICE, THIRUVANANTHAPURAM.695001 8 BALAKRISHNAN S/O. GOVINDA KURUP, BALARAGOM, KALARCODE, ALAPPUZHA.688003 9 THE NEW INDIA INSURANCE COMPANY LIMITED REPRESENTED BY ITS BRANCH MANAGER, ALAPPUZHA.688012 R1 BY ADV. SMT.BHAVANA VELAYUDHAN R1, R8 BY ADV. SRI.M.JITHESH MENON R1 BY ADV. SRI.R.RAJESH R1 BY ADV. SRI.S.SANAL KUMAR R6 BY ADV. SRI.P.C.CHACKO(PARATHANAM) R9 BY ADV. SRI.MATHEWS JACOB (SR.) R9 BY ADV. SRI.P.JACOB MATHEW THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY

HEARD ON 23.07.2020, ALONG WITH MACA.2073/2008(C), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 23rd day of July, 2020 The above appeals are filed by the Insurance Company of a Gypsy car and the owner of the bus involved in an accident, in which the rider of a

motor bike succumbed to the injuries caused.

negligence of any of the vehicles involved in the accident. The motor bike in which the deceased was the rider skidded and hit the Gypsy car owned by the appellant in MACA No.2311/2012 which hit a KSRTC bus. The rider of the motor bike succumbed to the injuries suffered in the accident.

2. The application was filed by the father,

brother and sister of the deceased under

awarded as per the Schedule under Section 163A to be paid by each of the vehicle owners. In the case of motor bike, the appellant in MACA No.2073/2008 was mulcted with the liability. In the other cases, the KSRTC and the appellant in MACA No.2311/2012, respectively the owner of the bus and the Gypsy car were each mulcted with 1/3rd of the liability.

3. Section 163A imposes the liability without reference to the negligence of any of the drivers involved in a motor vehicle accident. In the appeal filed by the insurer MACA No.2073/2008, the

only contention raised is on the basis of the decision of this Court reported in 2018(5) KHC 206 [Jiljet and another v. Stamphen George and others]. There was no additional premium paid as additional coverage for the rider. In such circumstance the insurer does not have the liability to indemnify the owner is the contention. Respectfully following the said decision, it has to be held that the appellant in MACA No.2073/2008 has no liability.

4. MACA No.2311/2012 is filed by the owner of the Gypsy vehicle claiming that there can be no liability cast on the owner of the said vehicle for reason of no negligence having been found on the driver of the vehicle. As was noticed, Section 163A does not have any reference to the negligence caused {2017(4) KLT 1093 (SC)[United India Insurance Co.Ltd. v. Sunil Kumar]}. The provision absolves the claimant from alleging or proving negligence on the part of any vehicle involved in an accident.

5. However, this does not absolve the owner of the vehicle who is the additional 6th respondent in the award. The additional 6th respondent despite notice has not appeared.

6. The respondents who were the claimants before the Tribunal would be entitled to seek execution of the liability cast on the owners of the bus and the Gypsy as also the owner of the bike, the

8th respondent in MACA 2073/2008. The KSRTC and the appellant in MACA 2311 of 2012 shall remit their share of the amounts awarded within a period of three months from the date of receipt of certified copy, failing which their interest liability shall stand increased to 12% from the expiry of the time specified herein. In such circumstance, MACA No.2073/2008 would stand allowed. MACA No.2311/2012 is rejected. No

order as to costs.

Sd/- K. VINOD CHANDRAN, JUDGE. Jma/

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