

M.A.C.A. No. 721 & 729 of 2024 : 1 :



2024:KER:94525

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

FRIDAY, THE 13<sup>TH</sup> DAY OF DECEMBER 2024 / 22ND AGRAHAYANA, 1946

MACA NO. 721 OF 2024

AGAINST THE AWARD DATED 13.03.2020 IN OP(MV) NO.285 OF 2017 OF  
MOTOR ACCIDENT CLAIMS TRIBUNAL TIRUR

APPELLANTS/2ND RESPONDENT:

C.IBRAHIM MUSLIAR  
AGED 72 YEARS  
S/O. MOIDHEENKUTTY, CHITTAKATH HOUSE, CHIRAMANANGAD DESOM,  
CHIRAMANANGAD VILLAGE, MARUTHANCODE, THRISSUR DISTRICT,  
PIN - 680 604

BY ADV SONNYMON K. MATHEW

RESPONDENTS/CLAIMANTS & RESPONDENTS 2 AND 3:

- 1 YAHUTTY, AGED 56 YEARS  
S/O. EBRAHIM, PILAKKAVIL HOUSE, VADAKKUMPURAM.P.O, EDAYOOR,  
MALAPPURAM DISTRICT, PIN - 676 552
- 2 NAFESA  
AGED 49 YEARS  
W/O. YAHUTTY, PILAKKAVIL HOUSE, VADAKKUMPURAM.P.O, EDAYOOR,  
MALAPPURAM DISTRICT, PIN - 676 552
- 3 P.V.MUHAMMEDKUTTY  
AGED 59 YEARS, S/O.KOYAKUTTY, PALAKKAVIL HOUSE,  
CHIRAMANANGAD DESOM, CHIRAMANANGAD VILLAGE,  
MARATHANCODE, THRISSUR DISTRICT, PIN - 680 604.
- 4 THE DIVISIONAL MANAGER  
THE NEW INDIA ASSURANCE COMPANY LTD., KUNNAMKULAM BRANCH,  
2ND FLOOR, ORISON COMPLEX, VADAKKANCHERY ROAD,  
KUNNAMKULAM, PIN - 680 503.

BY ADVS.

M.A.C.A. No. 721 & 729 of 2024 : 2 :



2024:KER:94525

R1 & R2 BY SRI. SRINATH C.V  
R4 BY SRI. LAL K JOSEPH  
K.SHIBILI NAHA(S-1714)  
A.LOWSY(K/000914/2002)  
GAYATHRI RAJAGOPAL(K/002596/2023)  
SURESH SUKUMAR(K/634/1997)  
ANZIL SALIM(K/000447/2018)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 12.12.2024, ALONG WITH M.A.C.A. NO. 729/2024, THE COURT ON 12.112.2024 DELIVERED THE FOLLOWING:

M.A.C.A. No. 721 & 729 of 2024 : 3 :



2024:KER:94525

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

FRIDAY, THE 13<sup>TH</sup> DAY OF DECEMBER 2024 / 22ND AGRAHAYANA, 1946

MACA NO. 729 OF 2024

AGAINST THE AWARD DATED 13.03.2020 IN OP(MV) NO.284 OF 2017 OF  
MOTOR ACCIDENT CLAIMS TRIBUNAL TIRUR

APPELLANTS/2ND PETITIONER:

C. IBRAHIM MUSLIAR  
AGED 72 YEARS  
S/O. MOIDHEENKUTTY, CHITTAKATH HOUSE, CHIRAMANANGAD DESOM,  
CHIRAMANANGAD VILLAGE, MARUTHANCODE, THRISSUR DISTRICT,  
PIN - 680 604.

BY ADV SONNYMON K. MATHEW

RESPONDENTS/CLAIMANT & RESPONDENTS 1 & 2:

- 1 K.P SAINUDHEEN  
AGED 49 YEARS  
S/O. MUHAMMED, KARAPARAMBIL HOUSE, VALANCHERY P.O,  
VAIKKATHUR, MALAPPURAM DISTRICT, PIN - 676 552.
- 2 SIRAJUNISA .P  
AGED 44 YEARS  
W/O.SAINUDHEEN, KARAPARAMBIL HOUSE, VALANCHERY P.O,  
VAIKKATHUR, MALAPPURAM DISTRICT, PIN - 676 552.
- 3 RAMSHEENA .P  
AGED 26 YEARS  
D/O. SAINUDHEEN.K.P, KARAPARAMBIL HOUSE, VALANCHERY P.O,  
VAIKKATHUR, MALAPPURAM DISTRICT, PIN - 676 552.
- 4 ASHIKH.K.P., AGED 21 YEARS  
KARAPARAMBIL HOUSE, VALANCHERY, VAIKKATHUR, MALAPPURAM  
DISTRICT, PIN - 676552

M.A.C.A. No. 721 & 729 of 2024 : 4 :



2024:KER:94525

- 5 P.V. MUHAMMEDKUTTY, AGED 59 YEARS  
S/O.KOYAKUTTY, PALAKKAVALLAPPIL HOUSE, CHIRAMANANGAD DESOM,  
CHIRAMANANGAD VILLAGE, MARATHANCODE, THRISSUR DISTRICT, PIN  
- 680 604
- 6 THE DIVISIONAL MANAGER  
THE NEW INDIA ASSURANCE COMPANY LTD., KUNNAMKULAM BRANCH,  
2ND FLOOR, ORISON COMPLEX, VADAKKANCHERY ROAD,  
KUNNAMKULAM, KERALA, PIN - 680 503

BY ADVS.  
R1 TO R3 BY SRI. SRINATH C.V  
R6 BY SRI. LAL K JOSEPH  
SURESH SUKUMAR(K/634/1997)  
ANZIL SALIM(K/000447/2018)  
K.SHIBILI NAHA(S-1714)  
A.LOWSY(K/000914/2002)  
GAYATHRI RAJAGOPAL(K/002596/2023)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON  
12.12.2024, ALONG WITH MACA.721/2024, THE COURT ON 13.12.2024  
DELIVERED THE FOLLOWING:

M.A.C.A. No. 721 & 729 of 2024 : 5 :



2024:KER:94525

'C.R'

**JOHNSON JOHN, J.**

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M.A.C.A Nos.721 & 729 of 2024  
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Dated this the 13<sup>th</sup> day of December, 2024.

**JUDGMENT**

The 2<sup>nd</sup> respondent in O.P.(MV) Nos. 285 of 2017 and 284 of 2017 on the file of the Motor Accident Claims Tribunal, Tirur filed the above appeals challenging the direction in the common award of the Tribunal permitting the 3<sup>rd</sup> respondent insurance company to recover the amount of compensation from the owner of the vehicle after payment to the petitioners.

2. The respective claim petitions are filed by the legal heirs of the deceased Muhammed Shafeeq and Hanees Mubaraq, who died in the motor vehicle accident occurred on 04.04.2016. At the time of occurrence, the deceased were travelling as rider and pillion rider in a motorcycle and a scorpio car driven by the 1<sup>st</sup> respondent from the opposite side in a rash and negligent manner caused to hit the motorcycle and thereby, the rider and pillion rider sustained fatal injuries

M.A.C.A. No. 721 & 729 of 2024 : 6 :



2024:KER:94525

and subsequently, succumbed to the injuries, while undergoing treatment in the hospital.

3. Before the Tribunal, Exhibits A1 to A14 were marked from the side of the petitioners and Exhibits B1 and B2 from the side of the respondents.

4. After trial and hearing both sides, the Tribunal found that the accident occurred because of the negligence on the part of the 1<sup>st</sup> respondent. The Tribunal also found that the 1<sup>st</sup> respondent was not having a valid driving licence and therefore, there is violation of policy conditions and hence, pay and recovery was ordered.

5. Heard the learned counsel for the appellant and the learned Standing Counsel appearing for the respondent insurance company

6. The learned counsel for the appellant argued that the Tribunal ought to have found that the owner of the vehicle is not in a position to verify the genuineness of the driving licence and since the appellant engaged the driver on satisfaction that he is competent to drive the vehicle, it cannot be held that there is violation of any policy conditions.

M.A.C.A. No. 721 & 729 of 2024 : 7 :



2024:KER:94525

7. The learned counsel for the respondent insurance company pointed out that the appellant herein was the 2<sup>nd</sup> respondent before the Tribunal and that even though the 2<sup>nd</sup> respondent appeared through counsel, no written statement was filed before the Tribunal and therefore, in the absence of any pleadings, the contention now raised in the appeal that the appellant, owner of the vehicle, has no means to verify the genuineness of the driving licence and that he engaged the driver on satisfaction that the said driver was competent to drive the vehicle, is not sustainable.

8. It is pertinent to note that the appellant has no case that the driver engaged by him was having a valid driving licence at the time of occurrence. But, the contention is that absence of driving licence by itself is not a sufficient ground to record a finding that there is violation of policy conditions. The policy of insurance is marked as Exhibit B2. A perusal of Exhibit B2 would show that there is a specific condition that the person driving the vehicle should hold an effective driving licence.



9. In ***United India Insurance Co. Ltd. v. Lehru and others*** [(2003) 3 SCC 338], the Honourable Supreme Court held thus:

“20. When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with RTOs, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia* [(1987) 2 SCC 654] , *Sohan Lal Passi* [(1996) 5 SCC





21 : 1996 SCC (Cri) 871] and *Kamla* [(2001) 4 SCC 342 : 2001 SCC (Cri) 701] cases. We are in full agreement with the views expressed therein and see no reason to take a different view.”

10. In ***Beli Ram v. Rajinder Kumar*** [2020 (5) KLT OnLine 1015 (SC)], the Honourable Supreme Court, after considering the judgment in ***National Insurance Co. Ltd. v. Swaran Singh & others*** [2004 (1) KLT 781], held as follows:

“Thus, if two interpretations were possible, it was opined that the one which is in favour of the claimants should be given, but violence should not be done to the clear and plain language of the statute. Thus, while protecting the rights of the claimants by asking the insurance company to deposit the amount, the recovery of the same from the insured would follow as the sympathy can only be for the victim of the accident. The right which has to be protected, is of the victim and not the owner of the vehicle. It was, thus, observed in para 18 as under:

“18. When an employer employs a driver, it is his duty to check that the driver is duly licensed to drive the vehicle. Section 5 of the Motor Vehicles Act provides that no owner or person in charge of a motor vehicle shall cause or permit any person to drive the vehicle if he does not fulfill the requirements of Sections 3 and 4 of the Motor Vehicles Act. The owner must show that he has verified the licence. He must also take reasonable care to see that his employee gets



his licence renewed within time. In my opinion, it is no defence for the owner to plead that he forgot that the driving licence of his employee had to be renewed. A person when he hands his motor vehicle to a driver owes some responsibility to society at large. Lives of innocent people are put to risk in case the vehicle is handed over to a person not duly licensed. Therefore, there must be some evidence to show that the owner had either checked the driving licence or had given instructions to his driver to get his driving licence renewed on expiry thereof. In the present case, no such evidence has been led. In view of the above discussion, I am clearly of the view that there was a breach of the terms of the policy and the Insurance Company could not have been held liable to satisfy the claim.”

11. As noticed earlier, even though the appellant herein appeared through counsel before the Tribunal, no written statement was filed before the Tribunal. Therefore, in the absence of any material to show that the appellant had either checked the driving licence or had taken test of the driver in order to satisfy himself that the said person is competent to drive the vehicle, it cannot be held that the appellant has taken reasonable care before employing the driver. Therefore, I find no reason to interfere with the finding of the Tribunal that there is breach of

M.A.C.A. No. 721 & 729 of 2024 : 11 :



2024:KER:94525

the terms of the policy and I find that the appeals are devoid of merit and liable to be dismissed.

In the result, these appeals are dismissed. No costs.

**sd/-  
JOHNSON JOHN,  
JUDGE.**

Rv