



2025:KER:21530

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

WEDNESDAY, THE 12<sup>TH</sup> DAY OF MARCH 2025 / 21ST PHALGUNA,

1946

MACA NO. 2171 OF 2012

OPMV NO.1139 OF 2004 OF ADDITIONAL MOTOR ACCIDENTS

CLAIMS TRIBUNAL, ERNAKULAM

APPELLANTS/RESPONDENTS 3 AND 4

- 1 M.J.JOY, S/O.GEORGE JOSEPH, MANIKKATH HOUSE,  
NEAR KURISHUPALLY, KADAVANTHRA, COCHIN-20  
(MANAGING PARTNER, MANIKKATH CONSTRUCTIONS) .
- 2 JOSE JAMES, S/O.JAMES, KOTTOORAN HOUSE,  
NAZARETH ROAD, PULINCHODU, ALUVA WEST VILLAGE  
(SUPERVISOR OF -DO-) .

BY ADVS.  
SRI.REJI GEORGE  
SRI.GOPAKUMAR G. ALUVA

RESPONDENTS/PETITIONERS AND RESPONDENTS 1, 2, 5, 6 & 7

- 1 P.J.VARGHESE, AGED 49 YEARS  
S/O.LATE JOSEPH, PASHNIPARAMBIL HOUSE, CHERIA  
KADAMAKKUDY, KADAMAKKUDY P.O., KADAMAKKUDY  
VILLAGE, KOCHI TALUK, ERNAKULAM DISTRICT-  
682027.
- 2 LILLY VARGHESE, AGED 46, W/O.P.J.VARGHESE OF  
-DO- DO -
- 3 SHAMSUDHEEN, THARAYIL HOUSE, NAMBIAPURAM,



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PALLURUTHY P.O., COCHIN-682006.

- 4 THE ORIENTAL INSURANCE COMPANY LTD.  
EDAPPALLY H.S.P.O JUNCTION, COCHIN-682024.
- 5 RAMAKRISHNAN NAIR, S/O.CHANDRASEKHARAN NAIR,  
VELLIYADIPPARAMBIL HOUSE, THEKKEMURIYIL,  
NEDUMUDI VILLAGE, ALAPPUZHA DISTRICT (CHIEF  
ENGINEER, M/S.KANAKAN STORAGE PVT.LTD.)-688001.
- 6 D.RAMAKRISHNA, S/O.DAMODARAN, H.NO.109,  
BADELBHAGOM, NEW JIBALTILA VILLAGE, PUTHUR  
TALUK, KARNATAKA STATE (SUPERVISOR OF -DO-)-  
574201.
- 7 ARUN RAJ, S/O.RAJAGOPALAN, ARUNAJALI HOUSE,  
CHANGAMPUZHA ROAD, EDAPPILLY N.VILLAGE, COCHIN,  
(SUPERVISOR OF -DO-)-682024.
- 8 NAGESH KINARKAR @ RUPESH  
S/O.ASOK, SINADU BHAGOM, KARVAR TALUK, UTTAR  
KARNATAKA DISTRICT, KARNATAKA STATE (SUPERVISOR  
OF -DO-)-581301.

BY ADV S.SANTHOSH KUMAR

THIS MOTOR ACCIDENTS CLAIMS APPEAL HAVING BEEN  
FINALLY HEARD ON 21.2.2025, ALONG WITH MACA.2294/2012,THE  
COURT ON 12.03.2025 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

WEDNESDAY, THE 12<sup>TH</sup> DAY OF MARCH 2025 / 21ST PHALGUNA,

1946

MACA NO. 2294 OF 2012

OPMV NO.1139 OF 2004 OF ADDITIONAL MOTOR ACCIDENTS

CLAIMS TRIBUNAL, ERNAKULAM

APPELLANTS/ADDL.RESPONDENTS 5 TO 8

- 1 RAMAKRISHNAN NAIR,VELLIYADIPARAMBIL HOUSE,  
THEKKEMURIYIL, NEDUMUDI VILLAGE, ALAPPUZHA.
- 2 D. RAMAKRISHNA,HOUSE NO.109, BADELBHAGOM, NEW  
JINBALILA VILLAGE, PUTHUR TALUK, KARNATAKA  
STATE.
- 3 ARUN RAJ, ARUNANJALI HOUSE, CHANGAMPUZHA ROAD,  
EDAPPALLY NORTH VILLAGE, COCHIN -24.
- 4 NAGESH KINARKAR @ ROOPESH,  
SINADU BHAGOM, KARVAR TALUK, UTTAR KARNATAKA  
DISTRICT, KARNATAKA STATE.

BY ADVS.  
S.SANTHOSH KUMAR  
P.LISSY JOSE

RESPONDENTS/CLAIMANTS & RESPONDENTS 1 TO 4

- 1 P.J VARGHESE  
PASHNIPARAMBIL HOUSE, CHERIYAKADAMAKUDI,  
KADAMAKUDI P.O., KADAMAKKUDI VILLAGE, ERNAKULAM  
- 682027.



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- 2 LILLY VARGHESE, PASHNIPARAMBIL HOUSE,  
CHERIYAKADAMAKUDI, KADAMAKUDI P.O., KADAMAKKUDI  
VILLAGE, ERNAKULAM - 682027.
- 3 SHAMSUDHEEN  
THARAYIL HOUSE, NAMBIYAPURAM, PALLURUTHY P.O.,  
COCHIN - 682006.
- 4 THE ORIENTAL INSURANCE COMPANY LTD.,  
EDAPPALLY H.S. JUNCTION, COCHIN - 682024.
- 5 M.J. JOY, MANIKKATHU HOUSE, NEAR KURUSHUPALLY,  
KADAVANTHRA, COCHIN - 682020, (MANAGING  
PARTNER, MANIKKATH CONSTRUCTIONS).
- 6 JOSE JAMES, KOTTOORAN HOUSE, NAZARETH ROAD,  
PULINCHODU, ALUVA WEST VILLAGE, ERNAKULAM -  
683101 (SUPERVISOR, MANIKKATH CONSTRUCTIONS).

BY ADVS.  
M.H.HANIS-R3  
A.R.GEORGE-SC FOR R4  
REJI GEORGE-R5  
SRI.GOPAKUMAR G. ALUVA  
RILGIN V.GEORGE-R5

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN  
FINALLY HEARD ON 21.02.2025, ALONG WITH MACA.2171/2012,  
THE COURT ON 12.03.2025 DELIVERED THE FOLLOWING:



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**C.R.****JUDGMENT****Dated : 12<sup>th</sup> March, 2025**

MACA 2171 of 2012 is filed by the additional respondents 3 and 4 in OP(MV). 1139/2004 on the file of the Motor Accidents Claims Tribunal, Ernakulam. Additional respondents 5 to 8 in the O.P. are the appellants in MACA 2294 of 2012. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal)

2. The above OP was filed under Section 163A of the Motor Vehicles Act by the parents of the deceased Josemon who died in a motor vehicle accident that occurred on 3.8.2003. According to the petitioners on 3.8.2003 at about 8.45 p.m., the deceased was riding pillion on a motor cycle bearing registration No.KL-7/AM 3063 ridden by one George Silvan @ George and when it reached near ATS Hotel, W.Island, the motor cycle fell into a trench taken in the road, which was also filled with water and he sustained serious injuries and succumbed to the injuries on 5.8.2003. The 1<sup>st</sup> respondent is the owner of the motor cycle and the 2<sup>nd</sup> respondent is its insurer.

3. In the O.P., originally there were only two respondents, the owner and insurer of the motorcycle. Subsequently, additional respondents 3 to 8 were impleaded. Additional 3<sup>rd</sup> respondent is the Managing partner and Additional 4<sup>th</sup> respondent is the Supervisor of M/s. Manikkath Construction Company. The 5<sup>th</sup> respondent is the Chief Engineer and respondents 6 to 8 are the Supervisors of M/s.Konkan Storage Pvt.Ltd. It is alleged that the additional respondents 3 to 8 were constructing a trench in the public road for laying pipe line, that during the



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construction of the said trench, all the additional respondents negligently and carelessly kept the trench opened during night, without providing any barricades or warning signal or other safety measures and that is why, the accident occurred.

4. The Tribunal as per the Award dated 19.4.2012 directed the 2<sup>nd</sup> respondent to pay a compensation of Rs.3,43,500/- along with interest at the rate of 9% per annum to the petitioners and further permitted the 2<sup>nd</sup> respondent to recover the same from respondents 3 to 8.

5. Being aggrieved by the impugned Award to the extent it granted permission to the 2<sup>nd</sup> respondent to recover the compensation from additional respondents 3 and 4, they have preferred MACA 2171 of 2012 and Additional respondents 5 to 8 in the OP preferred MACA 2294 of 2012.

6. Now the point that arise for consideration is the following :-

*Whether in a proceeding under Section 163A of the Motor Vehicles Act, compensation can be ordered against a respondent who is neither the owner of the motor vehicle nor the authorized insurer?*

7. Heard Sri.Reji George, the learned counsel for the appellant in MACA 2171 of 2012, Sri.S.Santhosh Kumar, the learned counsel for the appellants in MACA 2294 of 2012/respondents 5 to 8 in the O.P. and Sri.A.R.George, the learned Standing Counsel for the 2<sup>nd</sup> respondent/insurer.

8. In this case, the accident as well as the death of Josemon in the accident are not in dispute. While the deceased Josemon was riding pillion on a motor cycle, the motor cycle fell into a trench filled with water and thereby he sustained serious injuries and succumbed to the injuries. Additional respondents 3 to 8 are the officials of a construction Company which constructed a trench in the



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public road for laying pipe line. According to the petitioners, the accident occurred as the respondents 3 to 8 constructed the trench without providing necessary warnings/ barricades or signal.

9. The only question that arise for consideration in this case is whether anybody other than the owner and insurer of a motor vehicle can be mulcted with the liability to pay compensation under Section 163A of the Motor Vehicles Act.

10. Section 163A (1) of the Motor Vehicles Act reads as follows :-

*163A(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.*

**Explanation** - *For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).*

11. On a perusal of the above provision it can be seen that the liability to pay compensation under the above provision is only to “*the owner of the motor vehicle or the authorised insurer*”. The learned counsel for the appellant would argue that the liability to pay compensation under sub-section (1) of Section 163A is limited to the owner of the motor vehicle or its authorised insurer as in a claim under the above provision, negligence need not be pleaded or established, which is made clear under sub-section (2).

12. Sub-section (2) of section 163A reads as follows :-

*“(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to*



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*any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.”*

13. In support of the above argument, the learned counsel for the appellant has also relied upon the decision of a Division Bench of this Court in **United India Insurance Co.Ltd., v. Madhavan M. & Ors., 2011 (3) KLJ 625**. In the above decision, two vehicles were involved in the accident. The question that arose for consideration before the Division Bench was whether the driver, owner and insurer of both the vehicles are to be impleaded in a claim under Section 163A of the MV Act. After interpreting the scope of Section 163A(1) of the MV Act, the Division Bench held that a claim under Section 163A can lie only against the owner of the vehicle and the authorised insurer. The Division Bench further held that a claim under the above provision will not lie against a driver, unless he is the owner also. Finally, the Division Bench held that the claim petition filed in that case against the owner and insurer of the vehicle in which the deceased was travelling, without arraying the owner and insurer of the other vehicle is perfectly justified and cannot be faulted.

14. Though in the above decision, the question whether a claim under Section 163A will lie against anybody other than the owner or insurer did not arise directly, the observation referred above substantiates the conclusion that a claim under Section 163A (1) of the MV Act will not lie against a person other than the owner and insurer of the motor vehicle, especially because, in a claim under Section 163A (1) there is no necessity to plead or establish negligence. In the above circumstance, the Award of the Tribunal permitting the 2<sup>nd</sup> respondent to recover the compensation from additional respondents 3 to 8 is liable to be set aside.





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In the result, both the Appeals are allowed. The Award of the Tribunal to the extent it permitted the 2<sup>nd</sup> respondent to recover the compensation from additional respondents 3 to 8 is set aside.

Sd/-

C.Pratheep Kumar, Judge

Mrcs/28.2.2025