

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

MACA.No. 1528 of 2004 ()

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AGAINST THE AWARD IN OPMV 1273/1995 of MOTOR ACCIDENTS CLAIMS TRIBUNAL,
IRINJALAKUDA DATED 21-08-2003**

APPELLANT/3RD RESPONDENT:

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UNITED INDIA INSURANCE CO.LTD
REP.BY ITS MANAGER, T.P.CELL, VETTUKATTIL
BUILDINGS, KOCHI-16.**

BY ADV. SMT.RAJI T.BHASKAR

RESPONDENTS/PETITIONERS 2 TO 6 & RESPONDENTS 1,2 & 4 RESPECTIVELY:

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- 1. RADHA, W/O.KUTTAN NAIR,
AGED ABOUT 54 YEARS, MEDATH HOUSE, PALAKKAL,
PALISSERY, THRISSUR DISTRICT.**
 - 2. CHANDRIKA, D/O. LATE NANU NAIR,
KANDANATH HOUSE, P.O.ARATTUPUZHA, THRISSUR DISTRICT.**
 - 3. MURALIDHARAN S/O. LATE NANU NAIR,
AGED ABOUT 46 YEARS, DO. DO.**
 - 4. SETHU MADHAVAN,
S/O. LATE MEENAKSHI AMMA, DO. DO.**
 - 5. SIVADASAN S/O. LATE MEENAKSHI AMMA,
DO. DO.**
 - 6. P.B.PRAMOD, S/O. BALAKRISHNAN,
PANIKASSERY HOUSE, P.O. METHALA, THRISSUR DISTRICT**
 - 7. RAJENDRAN, S/O.PAZHANIMALA,
KURAVANKATTIL HOUSE, VADAKUMTHARA,
THEMKURISSI, PALAKKAD DISTRICT.**
 - 8. M.K.SHIHABUDDIN, S/O.M.B.KUNJABDULLA,
MAKANPARAMBIL HOUSE, PUTHIYAKAVU
P.O.MATHILAKAM, THRISSUR DISTRICT.**

**R1 TO R5 BY ADV. SRI.P.V.CHANDRA MOHAN
R8 BY ADVS. SRI.K.B.MOHANDAS
SRI.LELLULAL T.G.THUNDATHIL**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

M.A.C.A.No.1528 of 2004

Dated this the 27th day of May, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the third respondent in O.P.(MV)No.1273 of 1995 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda. Respondents 1 to 5 are claimants 2 to 6 therein and the other respondents are respondents 1, 2 and 4 respectively therein. By award passed on 21.8.2003 the Motor Accidents Claims Tribunal awarded the sum of Rs.68,100/- as compensation to respondents 1 to 3 herein and directed the appellant-insurer to pay the said amount together with interest at 9% per annum and proportionate costs. The appellant-insurer has aggrieved by the said award filed this appeal. The brief facts of the case are as follows:

2. Respondents 1 to 5 along with another filed the claim petition contending that on account of the rash and negligent driving of a motor car bearing registration No.KLF 4700 by the second respondent before the Tribunal, the husband of the first claimant and father of the other claimants sustained serious injuries at about 11.15 a.m. on 18.2.1995 and he, later succumbed to the injuries sustained by him

after discharge from hospital, on 21.3.1995. They claimed in all the sum of Rs.1,17,700/- as compensation under various heads.

3. Upon receipt of summons, the second respondent, who it is stated was driving the motor vehicle, entered appearance and filed a written statement dated 24.11.1997 denying and disputing the averments in the claim petition. He also contended that the vehicle was duly insured with the third respondent insurer (the appellant herein) and if at all any amount is payable, the liability to pay is on the insurer.

4. The aforesaid written statement was filed on 24.11.1997. The third respondent had even before that date filed a written statement dated 25.1.1997 wherein it was inter alia contended as follows:

"2) The petition is not legally maintainable against this respondent. The Ist respondent is not the person insured the vehicle mentioned in the petition. The IInd respondent is not holding valid Licence or badge which is necessary to drive the vehicle mentioned in the petition. So petition may be dismissed with cost of this respondent.

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7.) Statement in para 15 and 17 are correct. The vehicle KLF 4700 car was holding a valid policy on the date of alleged accident. KLF 4700 car was holding a policy 5261 with third respondent on the date of accident. But third respondent is not liable to pay any claim amount as the vehicle was not insured

by Pramod whose name is shown as Ist respondent. The vehicle was owned insured by M.K. Shihabudeen. Charge of ownership was not informed to the R3 company. Further to state the person who was driving the vehicle on the alleged time of accident was not holding, valid licence to drive the vehicle. He was not under employment or under control of owner of the vehicle on the date of alleged accident so this respondent is not legally liable to pay any amount as compensation."

In view of the averments therein the claimants filed an application to implead Sri. M.K. Shihabudeen, named in paragraph 7 of the written statement, as additional 4th respondent. The said application was allowed and he was impleaded as additional 4th respondent. The first respondent before the Tribunal as well as the additional 4th respondent did not enter appearance though notice was served on them, with the result they were set ex parte.

5. The Tribunal, after considering the rival contentions and the evidence on record, held that the accident took place on account of the rash and negligent driving of the motor car. The Tribunal also awarded the sum of Rs.68,100/- as compensation under various heads and directed the appellant to deposit the said amount together with interest at 9% per annum. The appellant has, aggrieved by the said award, filed this appeal.

6. The principal contention raised in the instant appeal is that the second respondent before the Tribunal (the 7th respondent herein) did not possess a valid driving licence on the date of the accident; that

the appellant had filed I.A.No.1053 of 2002 in the Motor Accidents Claims Tribunal praying for an order directing the second respondent to produce the driving licence and badge, if any, issued to him; that a copy of the said application was served on the second respondent before the Tribunal, but the said application or the contention raised by the appellant in his written statement that the second respondent driver did not possess a valid driving licence on the date of the accident was not considered by the Tribunal. It is contended that consequently there has been a failure of justice. It is also contended that the police had registered Crime No.62/1995 against the second respondent, that the Police had also charge sheeted the driver for driving the vehicle without a valid driving licence and therefore, the Tribunal ought to have, in any view of the matter, reserved liberty with the appellant-insurer to recover the amount paid by it from the owner of the motor car.

7. We heard Smt.Raji T. Bhasker, learned counsel appearing for the appellant and Sri.P.V.Chandramohan, learned counsel appearing for the claimants. We have also gone through the pleadings and the materials on record, including the lower court records. Shorn of details, the main contention raised by the learned counsel appearing for the appellant during the course of arguments is that as the second respondent before the Tribunal, the seventh respondent herein, did not

possess a valid driving licence, the insurer is not liable to pay the compensation and in any event, it should have been given the right to recover the amount paid by it under the award from the owner and driver of the motor vehicle. The main thrust of the arguments raised by the learned counsel appearing for the appellant is that the Tribunal has failed to take note of the contentions raised in that regard in paragraphs 2 and 7 of the written statement as also the other materials on record.

8. Per contra, the learned counsel appearing for the claimants contended that the appellant has not specifically pleaded in the written statement that on the date of the accident the second respondent before the Tribunal did not possess a valid driving licence or badge and therefore, the appellant cannot be heard to contend that the Tribunal erred in not advertng to the said contention. Referring to I.A.No.1053 of 2002, the learned counsel for the claimants contended that the affidavit filed in support of the said application is not one sworn to by an officer of the insurer, but by the counsel appearing for the insurer, that the deponent of the affidavit has not in the affidavit stated the source of the information based on which it was averred that the second respondent before the Tribunal did not possess a valid driving licence or badge on the date of the accident and therefore, in view of lack of proper pleadings, no exception can be taken to the impugned

award.

9. A reading of the written statement filed by the insurer before the Tribunal, more particularly paragraphs 2 and 7, discloses that the insurer had not specifically pleaded that the second respondent before the Tribunal did not possess a valid driving licence or badge on the date of the accident, i.e., 18.2.1995. The averment in paragraph 2 of the written statement dated 25.1.1997 which was filed on 21.5.1997, four months thereafter, is that the second respondent is not holding a valid driving licence or badge. The appellant has not in the written statement contended that on the date of the accident the second respondent did not possess a valid driving licence. If the second respondent's driving licence has ceased to be valid thereafter by reason of the fact that the period of validity had expired, that will not in any way enable the insurer to contend that the licence has ceased to be valid and therefore it is liable to pay the compensation. On going through the averments in paragraph 2 of the written statement, which is extracted earlier, we are not persuaded to hold that the appellant had put forward a case before the Tribunal that on the date of the accident the second respondent driver did not possess a valid driving licence. A reading of the averments in paragraph 7 of the written statement, which are also extracted earlier, disclose that the appellant has not raised a plea that on the date of the accident the second

respondent driver did not possess a valid driving licence. The only averment in paragraph 7 is as follows:-

"Further to state the person who was driving the vehicle on the alleged time of accident was not holding, valid licence to drive the vehicle."

Herein again the averments are, in our opinion, extremely vague. If in fact, the second respondent before the Tribunal did not possess a valid driving licence, the appellant ought to have stated in the written statement that the second respondent did not possess a valid driving licence at the time of the accident. Such being the situation, we are not persuaded to hold that the Tribunal erred in not allowing I.A.No.1053 of 2002, which was not supported by the pleadings in the written statement and which, as stated earlier, is supported by an affidavit sworn to by the counsel appearing for the insurer and not an officer of the insurer. The appellant-insurer, who was not careful and diligent in preparing a written statement putting forward appropriate contentions, is not, in our opinion, justified at this distance of time, more than two decades after the accident took place and nearly 12 years after the impugned award was passed, to contend for the position that it should be permitted to recover the amount paid by it from the owner and driver of the motor vehicle. On an over all view of the matter we are not persuaded to hold that the appellant has made out a case that the second respondent before the Tribunal did not

possess a valid driving licence on the date of the accident. Ext.A1 FIR and Ext.A5 charge sheet do not show that the Police had charge sheeted him for driving the motor vehicle without possessing a valid driving licence. In any case Ext.A5 charge sheet would disclose that the second respondent possessed a valid driving licence and the only charge therein was that he did not get it renewed within a period of thirty days. Therefore, on the basis of Ext.A1 FIR and Ext.A5 charge sheet also, we are unable to hold that on the date of the accident the second respondent before the Tribunal did not possess a valid driving licence.

For the reasons stated above, we hold that there is no merit in the instant appeal. The appeal fails and is dismissed. No costs.

**Sd/-
P.N.RAVINDRAN
JUDGE**

**Sd/-
ANU SIVARAMAN
JUDGE**

/true copy/

P.A. To Judge

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