

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

MACA.No. 133 of 2015 ()

OPMV 1090/2005 of ADDL.MOTOR ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA

APPELLANT/2ND RESPONDENT :

**AJIN
VALIYAPURATHUPUTHENTHARA, THIRUMALABHAGOM,
THURAVOOR P.O., CHERTHALA, ALAPPUZHA DISTRICT**

**BY ADVS.SRI.P.N.MOHANAN
SRI.C.P.SABARI**

RESPONDENTS/PETITIONER/RESPONDENTS NO. 1 & 3 :

- 1. PONNAPPAN
VANCHIPURACKAL HOUSE, PALLIPURAM PANCHAYAT,
CHERTHALA, ALAPPUZHA 688524**
- 2. CHIDAMBARAN
PARVATHY MANDIRAM, THURAVOOR, CHERTHALA
ALAPPUZHA- 688 524**
- 3. UNITED INDIA INSURANCE CO. LTD
KALAMASSERY BRANCH, ERNAKULAM-682 011
REPRESENTED BY ITS BRANCH MANAGER.**

**BY SRI.JOHN JOSEPH VETTIKAD, SC,
BY ADV. SMT.T.C.SOWMIAVATHY**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

MACA.No. 133 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE A1: ORIGINAL OF THE R.R. NOTICES DT 11/2/2013.

ANNEXURE A2: COPY OF THE SCENCE MAHASSAR DELIVERED BY THE OFFICER ATTACHED THE VEHICLE.

ANNEXURE A3: ORIGINAL OF THE VALID FITNESS CERTIFICATE DURING THE PERIOD OF ACCIDENT.

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.B. SURESH KUMAR, J.

M.A.C.A. No.133 of 2015

Dated this the 9th day of February 2015

J U D G M E N T

The owner in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the award passed by the Tribunal.

2. The first respondent filed the application for compensation, alleging that he sustained injuries in an accident took place on 08.09.2003 involving the vehicle owned by the appellant and driven by the second respondent. The appellant did not contest the application. The third respondent, the insurer contested the application. The contention raised by the third respondent was that the appellant was not holding a valid fitness certificate for the vehicle at the time of the accident and therefore they are not liable to indemnify the appellant. The Tribunal accepted the contention of the insurer and while granting compensation to the claimant, permitted the third respondent to recover the

compensation from the appellant. It is aggrieved by the said direction of the Tribunal, the appellant has come up in this appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the third respondent.

4. The learned counsel for the appellant contended that the appellant was holding a valid fitness certificate for the vehicle at the time of accident. He has also drawn my attention to the photo copy of the fitness certificate produced along with memorandum of appeal. The photocopy of the fitness certificate produced along with the appeal indicates prima facie that the vehicle had a valid fitness certificate at the time of the accident. In the said circumstances, I am of the view that the interests of justice demand that an opportunity shall be given to the appellant to establish before the Tribunal that the vehicle at the relevant time had a valid fitness certificate.

5. In the result, the appeal is allowed and the impugned award to the extent it permits the third

respondent to recover the compensation from the appellant is set aside. The Tribunal is directed to consider the issue as to the right of the third respondent to recover the compensation from the appellant afresh, after affording the appellant an opportunity to adduce evidence. The parties shall appear before the Tribunal on 10.03.2015. Since the award in favour of the claimant is being confirmed, the claimant need not appear in the further proceedings pursuant to this judgment.

Sd/-
P.B. SURESH KUMAR
JUDGE

NS