

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 1ST APRIL 2015/11TH CHAITHRA, 1937

MACA.No. 172 of 2015 ()

OP(MV) NO.640 OF 2008 OF MACT, MUVATTUPUZHA.

APPELLANT(S)/2ND RESPONDENT:

KUMARA SHARMA AGED 55 YEARS
S/O.NARAYANA ELAYATH, KADAMBANATTU ILLAM
KIZHACOMBU P.O., KOOTHATTUKULAM
ERNAKULAM DISTRICT. PIN - 686 662.

BY ADVS.SMT.P.P.STELLA
SRI.BIJIMON C.CHERIAN

RESPONDENT(S)/PETITIONERS AND RESPONDENTS 1 & 3:

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1. BIJU JACOB, AGED 42 YEARS
S/O.CHACKO, KUTTIANKONATH HOUSE
VELLOOR P.O.VELLOOR KARA, VELLOOR VILLAGE
KOTTAYAM DISTRICT.PIN - 686 501.
 2. PRADEEP
S/O.VENKIDEN, PANACHIYIL HOUSE, PULICKAPADY BHAGAM
PAZHOOR KARA, PIRAVOM VILLAGE, ERNAKULAM DISTRICT
PIN - 686 664.
 3. M/S.ORIENTAL INSURANCE COMPANY LTD
KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN - 686 691.

BY SMT.K.S.SANTHI (R3)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 3.2.2015,
THE COURT ON 1.4.2015 DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.A.C.A. No.172 of 2015

Dated 1st April, 2015.

J U D G M E N T

The decision in O.P.(MV) No.640 of 2008 on the file of the Motor Accidents Claims Tribunal, Moovattupuzha is under challenge in this appeal. The second respondent in the proceedings before the Tribunal is the appellant.

2. The first respondent instituted the proceedings before the Tribunal alleging that he sustained injuries in the accident took place on 13.6.08, involving a vehicle owned by the appellant and driven by the second respondent. The third respondent was arrayed as the insurer of the vehicle. Neither the appellant nor the second respondent contested the application. The third respondent contested the application. While admitting the existence of an insurance policy for the vehicle at the time of accident, the third respondent contended that the second respondent was not holding a licence to drive the vehicle at the time of accident and that they are therefore entitled to recover the compensation payable to the claimant from the appellant. The Tribunal found that the claimant is entitled to compensation and accordingly passed an award

permitting him to recover from the third respondent a sum of Rs. 68,550/- by way of compensation. Since the appellant and the second respondent did not contest the application, the Tribunal permitted the third respondent to recover the compensation ordered to be paid to the claimant from the appellant. It is aggrieved by the said direction in the award, the appellant has come up in this appeal.

3. Earlier, after depositing the compensation before the Tribunal, the third respondent filed an application before the Tribunal, seeking a certificate for recovery of the compensation from the appellant invoking the provisions of the Kerala Revenue Recovery Act. The Tribunal ordered notice to the appellant on that application. On receipt of notice in the said application, realizing the fact that the Tribunal has passed award against him, the appellant preferred an application to set aside the ex parte award against him along with an application to condone the delay in filing the said application. The main contention raised in those applications was that the appellant had sold the vehicle to one Abu long prior to the accident and the registration of the vehicle was also transferred consequently to his name and that therefore, he is

not liable to pay compensation to the claimant. The Tribunal dismissed the said applications by a common order dated 4.8.2014. The said common order was challenged by the appellant before this Court in O.P.(MAC) No.169 of 2014. On 4.12.2014, the appellant was permitted to withdraw the said original petition with liberty to challenge the award and it is accordingly, this appeal is preferred. The registration particulars of the vehicle showing the transfer of vehicle to the name of Abu is also produced by the appellant in the appeal.

4. Heard the learned counsel for the appellant as also the learned Senior Counsel for the third respondent.

5. The learned counsel for the appellant contended that the appellant had sold the vehicle involved in the accident to one Abu as early as on 23.8.2006 and that he had no connection whatsoever with the vehicle thereafter. She has also pointed out that the policy relied on by the claimant is not a policy taken by the appellant, for, he has no connection whatsoever with the vehicle after the sale. She has further pointed out that on receipt of the notice from the Tribunal in the application for compensation, the appellant approached the third respondent and apprised of the fact that the vehicle was

sold by him long before the accident and he was assured by the officers of the third respondent that they will take care of the interests of the appellant also. According to the learned counsel, it is on account of the said reason, he remained ex parte in the proceedings.

6. The learned Senior Counsel for the third respondent contended that the appellant having not appeared before the Tribunal on receipt of notice from the Tribunal, he shall not be heard to contend that he was not the owner of the vehicle involved in the accident. The learned Senior Counsel has also pointed out that the reason shown by the appellant for not appearing before the Tribunal on receipt of notice has not been established.

7. True, as rightly contended by the learned Senior Counsel for the third respondent, the reason shown by the appellant for non-appearance before the Tribunal, viz., that on receipt of notice from the Tribunal, he had approached the third respondent and appraised them of the fact that the vehicle was transferred to one Abu long prior to the accident does not appear to be convincing. Even if it is assumed that what is stated by the appellant is correct, the same cannot be

accepted as sufficient cause for non appearance in the proceedings.

8. Be that as it may, Rule 376 of the Kerala Motor Vehicles Rules 1989 provides that it shall be the responsibility of the insurance company in an application for compensation to furnish the particulars of the registered owner of the vehicle and the licence of the driver to the Claims Tribunal. Rule 376 of the Kerala Motor Vehicles Rules 1989 reads thus :

“376. (1) It shall be the responsibility of the insurance company to collect the particulars regarding the registered owner of the vehicle and the driving licence and submit a report thereof to the Claims Tribunal concerned together with other information such as the name of the Insurance Company, the Divisional Office under which the policy has been taken, the number of the policy/Certificate, the period for which the policy subsists and the nature of the insurance liability, immediately on receipt of information regarding the accident from the parties.

(2) The Insurance Companies may require the Regional Transport Officer/Joint Regional Transport Officer concerned to give the details of the accident in Form “Comp. B” to enable them to submit reports under sub-rule(1) and on receipt of such requisition the Regional Transport Officer or the Joint Regional Transport Officer concerned shall provide the necessary details to the Insurance Company.”

In the light of the provisions in Rule 376 , when the insurer in a proceedings for compensation before the Tribunal seeks

permission to recover the compensation from the owner of the vehicle, the insurer has to show that the person from whom they seek to recover the compensation is the owner of the vehicle. Merely for the reason that a policy was issued by the third respondent in the name of the appellant, it cannot be said that the appellant was the owner of the vehicle at the time of the accident. There is nothing on record to indicate that the appellant was the registered owner of the vehicle involved in the accident at the relevant time. The additional document produced by the appellant before this Court as referred to above show prima facie that the appellant had nothing to do with the vehicle at the time of the accident. In the circumstances, I am of the view that the right of the third respondent to recover the compensation from the appellant needs to be reconsidered by the Tribunal with notice to the appellant.

9. In the result, the impugned award is set aside to the limited extent of permitting the third respondent to recover the compensation paid to the claimant from the appellant. The Tribunal is directed to consider the issue as to the right of the third respondent to recover compensation from the appellant

afresh with notice to the appellant. The parties are at liberty to adduce evidence. The parties are directed to appear before the Tribunal on 27.4.2015. It is made clear that since the award in favour of the claimant and the right of the claimant to recover the compensation from the third respondent are confirmed, the claimant need not appear in the proceedings pursuant to this judgment.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)