IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

MACA.No. 298 of 2015 ()
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AGAINST THE AWARD IN OPMV 64/2013 of M.A.C.T.,TIRUR
DATED 03-09-2014

APPELLANT(S)/3RD RESPONDENT:
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ICICI LOMBARD GENERAL INSURANCE CO.,
ZENITH HOUSE, KESHAVRAO KHADEMARG,
MAHALAZMI MUMBAI-01, THROUGH THE LEGAL MANAGER,
ICICI LOMBARD GENERAL INSURANCE CO.,
KANNANKERY ESTATE, 3RD FLOOR, SHANMUGHAM ROAD,
MARINE DRIVE, KOCHI-682031.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 &2:
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1. NIKHIL, AGED 11 YEARS, S/O.BALAKRISHNAN @ BALAN,S/O.VELU, KOLAPPARAKUNNATH HOUSE, CHEMBRA P.O., OTTAPPALAM TALUK, PALAKKAD-679304, MINOR, REPRESENTED BY FATHER AND NATURAL GUARDIAN BALAKRISHNAN @ BALAN, KOLAPPARAKUNNATH HOUSE, CHEMBRA P.O., OTTAPPALAM TALUK, PALAKKAD-679304.

2. RAVEENDRAN N., S/O.PADMANABHAN NAIR, NELLEKKAT KALATHIL HOUSE, VALIYAKUNNU P.O., TIRUR TALUK-676 552.

3. ABDUSALAM,S/O.KUNHUMOIDEENKUTTY,CHERAPPOLIKKAL HOUSE, KALPAKANCHERY PO, MALAPPURAM DISTRICT-676 552.

R2 & 3 BY ADV. SRI.T.K.SAIDALIKUTTY
R2 & 3 BY ADV. SRI.M.I.JOHNSON
R1 BY ADV. SRI.T.K.MOIDEEN KUTTY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 23-09-2015, ALONG WITH MACA. 299/2015 & MACA. 300/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

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M.A.C.A.Nos.298, 299 & 300 of 2015

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Dated this the 23rd day of September, 2015.

JUDGMENT

Ramachandra Menon, J.

These appeals have been preferred by the insurer of the vehicle bearing No.KL-55/H-5808, a Maruthi Car, which collided with an autorikshaw bearing No.KL-52/C-3146, in which the claimants were travelling on 8.9.2011 causing serious injuries to them.

2. The accident gave rise to three separate claim petitions, as O.P.(MV) Nos.61/2013, 62/2013 and 64/2013, wherein joint trial was ordered and all the matters were considered together. Specific pleading was raised from the part of the Insurance Company to the effect that the driver of the Maruthi Car was not having valid driving licence and disputed the liability. It was also brought out before the Tribunal that the driving licence of the 1st respondent had expired much prior to the date of accident and it was

got renewed only after the date of accident. Since the licence was not valid on the date of accident, the Insurance Company was sought to be absolved.

3. The contention of the Insurance Company was negated and the Tribunal observed that by virtue of the law declared by the Full Bench and reported in Oriental Insurance Co. Ltd. v. Paulose [2004 (1) KLT 8 (F.B)] and some other decisions, such as, Lal chand v. Oriental Insurance Co. Ltd. [2006 (4) KLT 17 (SC)], Sudhir Kumar Rana v. Surinder Singh and others [AIR 2008 SC 2405], National Insurance Co. Ltd. v. Swaran Singh [2004 (1) KLT 781 (SC)] and Raveendran v. Sarojini [2010 (1) KLT SN 92], expiry of the driving licence was not enough to absolve the Insurance Company from the liability to be satisfied on behalf of the insurer and the said liability was mulcted upon the insurer; thus denying the right of recovery as well. This, in turn, is under challenge in these appeals preferred by the Insurance Company.

4. Heard the learned counsel for the appellants as well as the learned counsel who entered appearance on

behalf of the respondents 1 and 2.

5. During the course of hearing, the learned counsel for the appellants submits that exactly similar issue had come up for consideration before a larger Bench of this Court and as per the decision reported in Oriental Insurance Company Ltd. v. Poulose 2014 (1) KLT 682 (L.B)], the law laid down by the Full Bench of this Court in Oriental Insurance Co. Ltd. v. Paulose [2004 (1) KLT 8 (F.B)] and relied on by the Tribunal, was overruled and it was held that, if the licence had expired before the accident and it was not renewed within 30 days and if the accident occurred subsequently, the driver was to hold as not duly licensed on the relevant date and hence the Insurance Company was entitled to have the right of recovery after satisfying the claim preferred by the victim.

6. The learned counsel appearing for the respondents 1 and 2 submits, on the other hand, that the larger Bench, though considered the dictum laid down by the Apex Court in Swaran Singh's case (supra) in para-26, it was not properly analysed. With

reference to the contents of para-102 of the judgment in Swaran Singh's case (supra), the learned counsel submits that the driver, in the said case, himself was the owner of the vehicle and as such, the violation/breach of the statutory/policy conditions was obvious. Coming to the case in hand, the owner and driver were different and hence, there could not have been any automatic inference as to the violation/breach of the statutory/policy conditions; thus, contending that the liability fixed upon the shoulders of the Insurance Company is perfectly in order, and it is not liable to be interfered in any manner.

7. The necessity to have effective driving licence stipulated under Section 3 of the Motor Vehicles Act, 1988, which reads as follows:-

> 3. Necessity for driving licence:
>
> (1) No person shall drive a motor vehicle in any public place unless he holds of an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle (other than [a motor cab or motor cycle] hired for his own use or rented under any scheme made under

> sub-section (2) of Section 75) unless his driving licence specifically entitles him so to do.
>
> (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

On expiry of the term of licence, the procedure as to how it is to be renewed and what will be the consequences, is dealt with under Section 15 of the Act. It is obligatory for the party concerned to have the driving licence renewed and if the application for renewal of the licence is not made within 30 days, it will result in serious consequence. To put it more clear, once the driving licence is expired and if an application is filed within 30 days from the date of expiry, the licence will be renewed with effect from the date of expiry. On the other hand, if the application for renewal is submitted after 30 days of expiry of the driving licence, it shall be renewed only from the date of renewal and never before. It was with reference to this legal/statutory position that the judgment was rendered by the larger Bench, overruling the decision rendered by the Full Bench of this Court in Oriental Insurance Co. Ltd. v. Paulose [2004 (1) KLT 8 (FB)].

8. The question considered, as mentioned hereinbefore, was whether the person concerned could be deemed as a person "duly licensed", when there was no valid driving licence on the date of accident. This has been answered in the 'negative'. The factual position appears to be exactly similar in the instant case as well. The driving licence of the 1st respondent expired much earlier and the same was admittedly renewed only after the date of accident. This being the position, the vehicle concerned was being driven by the person, i.e. the 1st respondent, without any driving licence and he was <u>not duly licensed</u> on the relevant date. The owner of the vehicle is not justified in saying that there was no obligation for him to check the position with regard to the possession of valid driving licence on the relevant date. It is also relevant to note that no steps were taken by the concerned parties to appear before the Tribunal and

submit that reasonable steps were to verify the position and that the obligation had already been discharged. The owner of the vehicle did not choose to mount the box and submit the position in this regard. It remains an admitted fact that the driving licence expired much before and it came to be renewed only after the date of accident. Violation of the statutory/policy condition is quite obvious. The law declared by the larger Bench is very much binding upon this Court. No law can be interpreted in favour of the wrong doer and as such the respondents 2 and 3, the owner and the driver respectively, are not entitled to have any benefit for their own deeds and misdeeds. They could not have acted without any regard to the lives and limbs of innocent victims and they have definitely to face the consequences. We hold it accordingly.

9. In the said circumstance, we find that the contention raised by the Insurance Company is liable to be accepted. Accordingly, we hold that the verdict passed by the Tribunal is not the correct position, in

view of the law declared by the larger Bench of this Court in Oriental Insurance Company Ltd. v. Poulose 2014 (1) KLT 682 (L.B)]. The award, to the said extent the right of recovery has been declined to the insurer, is set aside. It is made clear that the appellants are entitled to proceed against the driver and owner of the vehicle after satisfying the due amount to the claimants.

The appeals are allowed. No costs.

Sd/-
P.R. RAMACHANDRA MENON, JUDGE

Sd/-
K. HARILAL, JUDGE

okb.