

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE SMT. JUSTICE P.VASHA

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

MACA.No. 396 of 2015 ()

AGAINST THE AWARD IN OPMV 338/2012 of M.A.C.T. TIRUR DATED 06-06-2014

APPELLANT/3RD RESPONDENT:

RELIANCE GENERAL INSURANCE CO. LTD.
CALICUT, REPRESENTED BY ITS DEPUTY MANAGER
REGIONAL OFFICE, ERNAKULAM.

BY ADVS.SRI.GEORGE CHERIAN (SR.)
SMT.K.S.SANTHI
SMT.LATHA SUSAN CHERIAN

RESPONDENTS/RESPONDENTS 1 & 2:

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1. NOORUDHEEN.P
S/O.RAYINKUTTY, PALAKKAL HOUSE, KUMMINIPARAMBA (P.O)
MALAPPURAM DISTRICT. PIN NO. 673 638.
 2. SAIDALAVI
S/O.RAYINKUTTY PALAPPETTI, 7/434, PALAPETTI HOUSE
PALLIKKAL (P.O), KONDOTTY, MALAPPURAM DISTRICT
PIN NO.673 834 (OWNER).

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
26-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.SURENDRA MOHAN
&
P.V.ASHA, JJ.**

M.A.C.A.No.396 of 2015

Dated this the 26th day of March, 2015

J U D G M E N T

P.V.Asha, J.

This appeal is filed by the Insurance Company against the award passed by the Motor Accidents Claims Tribunal, Tirur in O.P. (MV)No.338/2012. Claimant sustained injuries when the autorickshaw he was driving, was hit by a lorry, on 15.01.2011. Appellant's contention was that the driver of the lorry did not have badge and hence they cannot indemnify the owner, as there was violation of the policy conditions.

2. From Ext A9 driving license, the Tribunal found that the driver of the lorry was authorised to drive transport vehicle and that badge was issued to him as early as on 24.12.1999. It was also found that he had not renewed the badge at the relevant time of the accident. Tribunal further found that , mere absence of badge at the time of accident cannot be considered as a ground to absolve the insurer from their liability to indemnify the owner of the vehicle. It is the above finding that is under challenge in this appeal.

3. The issue regarding the requirement of badge and liability of the Insurance Company is covered by a Full Bench decision of this Court reported in ***National Insurance Company v. Jisha [2015***

(1) KLT 1]. As per that judgment, the absence of badge alone cannot be considered as a reason for absolving the liability of the insurance company; in order to avoid liability, Insurance Company has to prove that the absence of badge was so fundamental a breach which has contributed to the accident. As the only contention raised in the appeal, is the absence of badge for the driver, there is no reason to interfere with the award of the Tribunal.

Accordingly, we dismiss the appeal.

Sd/-

K.SURENDRA MOHAN, JUDGE.

Sd/-

P.V.ASHA, JUDGE.