

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936**

**MACA.No.258 of 2013 ()**

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AGAINST THE AWARD IN OPMV 1272/1997 of MACT PALA,  
DATED 21-03-2001  
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**APPELLANT/2ND RESPONDENT :**

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BIJU ALEX, S/O.ALEXANDER,  
CHIRAKKALAYIL HOUSE, NEAR CHAMAKKALA CHURCH,  
CHAMAKKALA KARA, KOTHANALLOOR VILLAGE,  
REPRESENTED BY HIS P/A. HOLDER ROY JOSEPH,  
S/O JOSEPH, AGED 38 YEARS, CHIRIAKKALAYIL,  
CHAMAKKALA, KOTHANALLOOR VILLAGE  
KOTTAYAM DISTRICT.**

**BY ADVS.SRI.SHAJI THOMAS  
SRI.N.NAGARESH  
SRI.BINU PAUL  
SRI.T.V.VINU**

**RESPONDENTS/PETITIONER & RESPONDENTS 1&3 :**

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- 1. KUNJUMOL JOMON  
W/O.JOMON, EZHUTHUPURAYIL HOUSE, PARIYARAMANGALAM  
KADAPLAMATTOM P.O., KOTTAYAM DISTRICT-686 571.**
  - 2. N.G.SHAJI  
S/O.GOPALAN, NELLICKAL HOUSE, KUZHIMATTAM P.O.  
KOTTAYAM DISTRICT-686 533.**
  - 3. THE ORIENTAL INSURANCE COMPANY LTD  
KOTTAYAM-686 001.**

**R1 BY SRI.GEORGE CHERIAN (THIRUVALLA)  
R2 BY ADV. ADV.T S BIJU (B/O)  
R3 BY ADV. SRI.P.JACOB MATHEW**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 10-02-2015, ALONG WITH OPMAC. 2217/2012, THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:**

**MACA.No.258 of 2013 ()**  
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**ANNEXURE**

**PETITIONER(S)' ANNEXURE**  
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- ANNEXURE A1 : TRUE COPY OF APPELLANT'S PASSPORT ATTESTED BY A NOTARY ADVOCATE SHOWING THE RELEVANT ENTRIES FOR THE APPELLANT'S EXIT FROM INDIA.**
- ANNEXURE A2 : TRUE PHOTOCOPY OF THE AFFIDAVIT AND PETITION DATED 13.12.2011 IN OP(MV)NO.1272/1997 FILED BY THE APPELLANT BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM.**
- ANNEXURE A3 : TRUE PHOTOCOPY OF THE JUDGMENT IN WP(C)NO.922/2012 DATED 10.02.2012 OF THIS HONOURABLE COURT.**
- ANNEXURE A4 : TRUE PHOTOCOPY OF DRIVING LICENSE WITH BADGE OF THE APPELLANT.**

**RESPONDENT(S)' EXHIBITS :** **NIL**  
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**/TRUE COPY/**

**PA TO JUDGE**

**VS**

**P.B.SURESH KUMAR, J**

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**M.A.C.A.No.258 of 2013**  
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Dated this the 10th day of February, 2015

**JUDGMENT**

The driver of the vehicle in an original petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal. The challenge in the appeal is against the direction issued by the Tribunal permitting the insurer of the vehicle to recover from the appellant the compensation directed to be paid to the claimant.

2. The first respondent filed the original petition for compensation alleging that he sustained injuries in an accident took place on 26.2.1997. The second respondent was the owner of the vehicle involved in the accident and the third respondent was the insurer of the vehicle. The appellant and the second respondent did not contest the petition. The insurer contested the petition on the ground that the appellant was not holding a valid driving licence as also the authorisation to drive the vehicle involved in the accident and that therefore, they are entitled to recover the compensation, if any, payable to the claimant, from the appellant and the owner of the vehicle. The Tribunal accepted the contention of the insurer and permitted the insurer to recover from the appellant the compensation

directed to be paid to the claimant, holding that the appellant has not established that he was holding the authorisation to drive the vehicle involved in the accident.

3. In this appeal, the appellant has produced his original driving licence along with I.A.No.551/2015, invoking Order XLI Rule 27 of the Code of Civil Procedure. The driving licence of the appellant indicates that he was holding the authorisation to drive the vehicle involved in the accident. Even otherwise, in **National Insurance Co.Ltd v. Jisha** [2015(1) KLT 1], a Full Bench of this Court held that the insurer shall not be absolved from the liability to indemnify the owner on the ground that the driver was not holding the authorisation to drive the vehicle involved in the accident. In the said circumstances, the award impugned in this appeal to the extent it permits the insurer of the vehicle to recover from the appellant the compensation directed to be paid to the claimant is illegal and liable to be set aside.

4. In the result, the appeal is allowed, the impugned judgment to the extent it permits the third respondent to recover from the appellant the compensation directed to be paid to the first respondent is set aside. The Motor Accidents Claims Tribunal is directed to return the pre-deposit made by

the appellant for the purpose of this appeal within one month from today. The third respondent is also directed to refund to the appellant the amount, if any, recovered from the appellant on the basis of the impugned decision of the Tribunal, within one month from the date of receipt of a copy of this judgment. The registry is also directed to return the original driving licence of the appellant, after retaining a copy of the same on record.

Sd/-  
**P.B.SURESH KUMAR**  
**JUDGE**

VS