IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

MACA.No. 10 of 2011 ( )

AGAINST THE AWARD IN OPMV 361/2006 of ADL.D.C. & MACT, THODUPUZHA, DATED 15-05-2010

APPELLANT/CLAIMANT:-

SAJU P.C.
PUKKATTU HOUSE, THOKKUPARA.P.O, IDUKKI DISTRICT.

BY ADVS.SRI.SHAJI KURIAN
SRI.T.J.MICHAEL
SRI.JOSE MATHEW (KAVALAKALAM)

RESPONDENTS/RESPONDENTS:-

1. BIJO C.V. AND 2 OTHERS
SOUTH MARADI.P.O, MOOVATUPUZHA - 686 661.

2. ORIENTAL INSURANCE CO. LTD.,
REPRESENTED BY BRANCH MANAGER, IST FLOOR
K.V. VARKEY MEMORIAL COMPLEX
ANGAMALY.P.O - 683 572.

3. JOBISH JOHN, S/O. JOHN,
NIRAPPEL HOUSE, CHITTOOR KARA, PUTHUPARIYARAM.P.O
THODUPUZHA.

R2 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

M.A.C.A.No.10 of 2011

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Dated this the 25th day of February, 2015.

J U D G M E N T

The claimant in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal in exonerating the insurer of the vehicle involved in the accident from the liability to indemnify its owner.

2. The proceedings referred to above was instituted alleging that the appellant had sustained injuries in an accident took place on 12.2.2006, involving the vehicle owned by the first respondent and driven by the third respondent. The second respondent was the insurer of the vehicle. The vehicle involved in the accident was a transport vehicle. According to the appellant, the vehicle was loaded with milk packets of Highrange Milk Dairy and he was travelling in the vehicle as the authorised representative of the owner of the goods carried in the vehicle.

3. The first respondent contested the claim petition contending that the vehicle was duly insured at the time of accident and he is therefore entitled to be indemnified

by the second respondent. The second respondent while admitting the policy of insurance issued to the first respondent, contended that the appellant was a gratuitous passenger in the vehicle and therefore, he is not a third party covered by the insurance policy.

4. The Tribunal though found that the accident took place on account of the negligence of the third respondent and the appellant is entitled to compensation for the injuries sustained by him, absolved the second respondent from the liability to indemnify the first respondent on the ground that the appellant who is a passenger carried in the vehicle is not covered by the policy. The Tribunal, in the circumstances, directed the first respondent, the owner of the vehicle to pay a sum of Rs.57,200/- by way of compensation to the appellant. The appellant is aggrieved by the decision of the Tribunal to the extent it absolves the second respondent from the liability indemnify the first respondent. Hence this appeal.

5. Heard the learned counsel for the appellant as also the learned counsel for the second respondent.

6. The fact that the vehicle involved in the accident was covered by a statutory insurance policy at the time of accident is not disputed. In ***New India Assurance Co. Ltd.***

v. Asha Rani [2003(1) KLT 165 (SC)], the Apex Court considered the effect of the amendment introduced to Section 147(1)(b) of the Act with effect from 14.11.1994 and held that after the amendment, the owner of the goods or his authorised representative carried in the vehicle are also covered by a statutory policy. The relevant portion of the judgment reads thus:

> “It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle' which was added to the pre-existed expression 'injury to any person' is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury.”

In the instant case, the accident took place after 14.11.1994. As such, if the case of the appellant that he was accompanying the goods carried in the vehicle as the authorised representative of the owner of the goods carried in the vehicle is correct, he is covered by the policy. It is all the more so, since the vehicle in the instant case is a vehicle having seating capacity for two persons including the driver. The said fact is evident from the copy of the relevant page of the registration certificate produced in this appeal as additional document.

7. It is seen that the first respondent though denied the allegation of negligence levelled against the third respondent in the matter of contributing the accident, did not dispute the fact that the appellant was the authorised representative of the owner of the goods carried in the vehicle. The second respondent though denied the allegation that the appellant was accompanying the goods carried in the vehicle as its authorised representative, the said contention is not based on any material, as they do not mention anything in the written statement filed by them as to the avocation of the appellant. The Tribunal though held that the appellant has not produced any document to show that he was the authorised representative of the owner of the goods carried in the vehicle, it is not evident from the award that the insurer was absolved from the liability to indemnify the owner of the vehicle on that

ground. In so far as it is found that the vehicle at the time of accident was covered by a policy covering the risk of the authorised representative carried in the vehicle, I am of the view that the appellant has to be granted yet another opportunity to establish that he was the authorised representative of the owner of the goods carried in the vehicle at the time of accident.

8. In the result, the impugned award to the extent it exonerates the second respondent from the liability to indemnify the first respondent is set aside and the Tribunal is directed to consider the question whether the second respondent is liable to be indemnify the first respondent afresh, after affording the appellant an opportunity to adduce evidence.

The appeal is allowed as above.

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

Kvs/-

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PA TO JUDGE.