IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

MACA.No. 2438 of 2012

O.P(M.V)NO.666/2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALAKKAD

APPELLANT(S)/3RD RESPONDENT IN O.P(MV) :

ICICI LOMBARD GENERAL INSURANCE CO.LTD.
MUMBAI.

BY ADVS.SRI.K.B.RAMANAND
SRI.R.AJITH KUMAR (128/84)

RESPONDENT(S)/CLAIMANT AND 1ST RESPONDENT IN O.P(MV) :

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1. ARAVINDAKSHAN,
   S/O.SANKARAN NAIR, ARAVINDAM, CHAKKATHARA,
   NENMARA(PO), PALAKKAD.

2. SATHEESH.V.,
   S/O.VEERAPPAN, 5/175, KANNAMKULAMPADAM,
   MANAPADAM(PO), PUDUKODE, PALAKKAD.

R1 BY ADV. SRI.A.R.GANGADAS
R2 BY ADV. SRI.BABY MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

P.B.SURESH KUMAR, J.

M.A.C.A.No.2438 of 2012

Dated this the 29th day of July, 2015

JUDGMENT

The insurer in a proceedings for compensation has come up in this appeal challenging the decision of the Tribunal.

2. The first respondent filed the claim petition alleging that he sustained injuries in the accident took place on 22.8.2008, involving a motor cycle owned and ridden by the second respondent. The appellant contested the claim petition, contending among others, that the second respondent was not having a valid driving licence at the time of the accident. The Tribunal rejected the said contention and passed an award permitting the first

respondent to recover the compensation from the appellant. The appellant is aggrieved by the said decision of the Tribunal.

3. Heard the learned counsel for the appellant as also the respondents.

4. It is seen that one of the conditions of the policy issued by the appellant to the second respondent is that the vehicle covered by the policy shall be used only by a person who is holding a driving licence. Ext.A6 is the charge sheet filed by the police in the crime registered in connection with the accident which is the subject matter of the claim petition. It is seen from Ext.A6 charge sheet that the police after due investigation, came to the conclusion that the second respondent was not holding a driving licence to drive the vehicle involved in the accident. This Court in ***National Insurance Co.Ltd. vs. Ammini Amma*** (2013 (4) KLT 676) held that the insurer in a proceedings can rely on the charge sheet filed by the police to establish the contention that the person who was driving the vehicle at the time of the

accident was not having a valid driving licence.

5. In the light of the said decision of this Court, I am inclined to accept the contention of the appellant. In so far as the contention of the appellant is only that the second respondent has committed breach of terms of the policy, they are entitled to recover the compensation from the second respondent.

In the result, the appeal is allowed and the impugned award is modified permitting the appellant to recover the compensation from the second respondent. It is made clear that the appellant can recover the compensation only after paying the compensation to the claimant.

P.B.SURESH KUMAR, JUDGE.

smm