

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

MACA.No. 570 of 2015 ()

OPMV 428/2009 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, OTTAPPALAM

APPELLANTS/RESPONDENTS 1 & 2 :

- 1. SHAFEEK E.V., AGED 27 YEARS,
S/O.E.V.SULAIMAN, EKKOORATH VALAPPIL HOUSE,
SUKAPURAM P.O., MALAPPURAM DISTRICT
(DRIVER OF KL-10-J-6697 MINI LORRY.**
- 2. ABDUL RAB V.
S/O.CHEKKU, VATTEKAT HOUSE, KOLOLOMBA P.O.,
EDAPPAL VIA, PONNANI, MALAPPURAM DISTRICT.**

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENT/3RD RESPONDENT :

**UNITED INDIA INSURANCE COMPANY LTD.,
BRANCH OFFICE, WESTERN WING, AMBADI BUILDING,
PONNANI POLICY NO.101005/31/08/02/00010209
VALID FROM 15-11-2008 TO 14-11-2009).**

BY SRI.JOHN JOSEPH VETTIKAD

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 20-05-2015, ALONG WITH MACA. 571/2015,
MACA. 572/2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

M.A.C.A.Nos.570, 571 & 572 of 2015

Dated this the 20th day of May, 2015.

J U D G M E N T

The common award in three claim petitions before the Motor Accidents Claims Tribunal is under challenge in these appeals.

2. The claimants sustained injuries in an accident took place on 19.1.2009 involving a mini lorry owned by the second appellant and driven by the first appellant. The claim petitions were contested by the insurer of the vehicle on the ground that the vehicle was not having valid permit and fitness certificate at the time of accident. The Tribunal accepted the said contention of the insurer and while permitting the claimants to recover the compensation from the insurer, permitted the insurer to recover the compensation from the owner and driver of the vehicle. The owner and driver of the vehicle are, therefore, aggrieved by

the said decision of the Tribunal.

3. In ***Augustine v. Ayyappankutty @ Mani and another*** (2015(2) KHC 2190), a Full Bench of this Court held that want of fitness certificate is not a ground that could be raised by the insurer to get themselves absolved from the liability to indemnify the owner of the vehicle involved in the accident. Further, the appellants have produced before this Court along with I.A.No.16176 of 2015 the permit issued to the second appellant to operate the vehicle for the period from 31.3.2002 to 30.3.2010. In the light of the decision of the Full Bench referred to above and the permit of the vehicle produced before this Court, the impugned award of the Tribunal is liable to be set aside to the extent it permits the insurer to recover the compensation directed to be paid to the claimants from the appellants.

In the result, the appeals are allowed and the direction in the impugned common award permitting the

insurer to recover the compensation directed to be paid to the claimants from the appellants is vacated. The amount deposited by the appellants before the Tribunal as provided under Section 173(2) of the Motor Vehicles Act shall be released to the appellants.

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

Kvs/-

// TRUE COPY //

PA TO JUDGE.