IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

MACA.No. 583 of 2015 ()

AGAINST THE AWARD IN OPMV 685/2011 of M.A.C.T., OTTAPALAM
DATED 19-03-2014

APPELLANT(S)/RESPONDENTS 1 & 2:
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1. ARUNKUMAR U.
S/O.KRISHNANKUTTY NAIR, KODANGIL VETTATHU HOUSE,
PULASSSERY, KOPPAM, PATTAMBI.

2. M.SUNIL, S/O.VASU,
MUKKADAKATTIL HOUSE, CHERUKUDANGAD, PALLIPPURAM,
PATTAMBI.

BY ADVS.SRI.K.B.ARUNKUMAR
SRI.RANJIT BABU

RESPONDENT(S)/RESPONDENT NO.3:

THE ORIENTAL INSURANCE COMAPNY LTD.,
PRANAVAM BUILDING, PATTAMBI, PALAKKAD DISTRICT,
PIN - 679 303.

BY ADV. SRI.GEORGE CHERIAN (SR.)
BY ADV. SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

okb

P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

M.A.C.A.No.583 of 2015

Dated this the 11th day of September, 2015.

JUDGMENT

Ramachandra Menon, J.

This appeal has been preferred by the owner and driver of the vehicle bearing registration No.KL-10/M-6273 which got involved in a road traffic accident occurred on 29.10.2005. The injuries sustained by the claimant were sought to be compensated by filing O.P(M.V) No.685 of 2011 before the Motor Accidents Claims Tribunal, Ottappalam. The claim was sought to be resisted by the Insurance Company mainly contending that the vehicle concerned was not having valid fitness certificate at the time of the accident. It was also contended that the driver did not have valid driving licence to drive the vehicle at the relevant time.

2. In the course of further proceedings, the

driving licence of the 2nd respondent was produced before the Tribunal pursuant to I.A.No.1352 of 2013 preferred by the Insurance Company for causing production of the driving licence and fitness certificate. But since the fitness certificate was not produced, I.A. was closed by drawing averse inference. On conclusion of the trial, the Tribunal awarded a total compensation of Rs.75,500/-, which was directed to be satisfied with interest @ 9% per annum from the date of filing the petition on 10.10.2011. The Insurance Company was directed to satisfy the same however granting liberty to realise the same with interest and cost from the respondents 1 and 2 for violation of the statutory/ policy conditions with reference to the fitness certificate. This made the respondents 1 and 2 to prefer this appeal pointing out that the vehicle was actually covered by Annexure-I fitness certificate and hence the liability has to be satisfied by the Insurance Company itself.

3. Heard both the sides.

4. The learned counsel for the appellants submits that the fitness certificate could not be produced before the Tribunal at the relevant time despite the best effort taken and that the same has been produced along with the appeal as Annexure-I. Learned counsel for the Insurance Company submits that the fact in question has been verified and it has now been revealed that the vehicle was covered by a valid fitness certificate as well.

5. In the above facts and circumstances, the liability has to be satisfied by the Insurance Company, in so far as the statutory liability to the extent of coverage/risk contemplated under Section 147(2) of the Motor Vehicles Act is concerned. It is made clear that the right reserved in favour of the Insurance Company to get it recovered from the appellants herein, as ordered by the Tribunal, stands set aside. The appeal is allowed to the said extent.

The amount already deposited by the appellants to meet the statutory requirements for preferring the appeal as evident from the receipt dated 12.2.2015 issued by the office of the Tribunal is permitted to be withdrawn by the first appellant.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

Sd/-

K. HARILAL, JUDGE

okb.