IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

MACA.No. 602 of 2015 ()

AGAINST THE AWARD IN OPMV 757/2008 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THALASSERY DATED 13-06-2014

APPELLANTS/RESPONDENTS 1 & 2:
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1. KUNHUNHAMMA MATHEW
MATTATHU MANAL, WEST ELERI, ELERITHATTU POST
KASARGOD DISTRICT

2. SUNIL MATHEW
S/O.MATHEW, MATTATHU MANAL HOUSE, ADUKKAMPADI
WEST ELERI, ELERITHATTU POST, KASARGOD DISTRICT

BY ADV. SRI.WILSON URMESE

RESPONDENTS/PETITIONER & RESPONDENTS 3& 4:
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1. JOSE
S/O.KURUVILA, PANATHANAM HOUSE, PALAVAYAL POST
CHERUPUZHA VIA, KASARGOD DISTRICT 670511

2. THE RELIANCE GENERAL INSURANCE
2ND FLOOR, CITADEL ARCADE, OPP. TAGORE CENTENARY HALL
RC ROAD, CALICUT 673001

3. NATIONAL INSURANCE CO.LTD
1ST FLOOR, PERUMAL BUILDINGS, PERUMBA
PAYYANNUR 670307

R2 BY ADV. SRI.K.B.RAMANAND
R3 BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 13-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.,

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M.A.C.A. No.602 of 2015

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Dated this the 13th day of March 2015

JUDGMENT

Ramachandran Nair , J.,

This appeal is filed by the respondents 1 & 2 before the Tribunal in O.P.(MV) No. 757/2008. They are respectively the registered owner and the driver of the maruthi car bearing registration No. KL-14 E/8717. This appeal is filed only as regards the finding of the Tribunal that along with the insurance Company, the appellants are also liable. Since there is no challenge against the quantum, we have not issued notice to the claimants.

2. The sole issue herein is whether the appellants are liable to satisfy the award. We find from the award that the Tribunal in paragraph 25 allowed the Insurance Company to recover the amount covered by the award after payment to the claimant.

3. This direction was issued in the light of the finding

rendered in paragraph 11 of the award.

4. We heard learned counsel on both sides.

5. One of the contentions raised by the Insurance Company before the Tribunal was that at the time of the accident, the appellant no. 2 herein did not possess valid and effective badge to drive the transport vehicle involved in the accident. The Insurance Company filed I.A.540/2013 seeking to direct the 2nd respondent to produce his driving licence as well as badge. A separate order was passed on 24.5.2013 directing the first respondent/1st appellant to produce the driving license. This is the back ground of the direction permitting the Insurance Company for pay and recovery.

6. Before this Court, the appellants have produced driving license issued to the appellant No.2 along with I.A. No. 1049/2015. The same is an authorised copy of the driving license No. 60/3317/2004 issued by the Assistant L.A.Kanhangad. The same has been marked as Annexure A. Going by the same, it was first issued on 3.12.2004 and badge number and date is 60/903/2008 dated 6.11.2008. Herein, the date of accident is 11.5.2008. It is thus argued that there was

valid licence for the driver and that absence of badge is immaterial.

6. A Full Bench of this Court in the decision reported in ***National Insurance Company Vs. Jisha [2015(1) KLT 1]*** held that absence of badge is not a reason for imposing liability as far the owner and driver are concerned unless it is a fundamental breach in causing the accident. We extract paragraph 25 & 26 of the said judgment herein below:

> *"In the light of the view taken in paragraph 18 of the above judgment, the question is whether the absence of badge will be fatal. Under S. 149(2)(a) (ii) of the Act, it should be proved by the insurance company to avoid the liability under the policy that the vehicle was being driven by a person who was not duly licensed. As far as authorisation is concerned, it is only provided under S. 3 of the Act. The words "duly licenced" have been interpreted by the Apex Court in Swaran Singh's case (supra) and Iyyappan's case (supra). In Swaran Singh's case (supra) it was held in paragraph 38 that the words "effective licence" used in S.3 cannot be imported for sub-section (2) of S.149 of the Motor Vehicles Act. The words "duly licenced" used in sub-section (2) of S.149 are used in past tense. Their Lordships have considered an important factor that as far as third parties' right to get compensation is concerned, the Insurance Company will have to meet the liability. The Division Bench of this Court in Balakrishnan's case (2011 (4) KLT 412), after interpreting R. 6 of the Rules, was of the view that the*

alleged omission to apply for and obtain a badge is purely technical and cannot be said to be a fundamental breach as insisted by sub-para (vi) in paragraph 102 of the judgment in Swaran Singh's case (supra). As far as the proficiency for driving vehicle is concerned what is important is the obtaining of a driving licence under the relevant rules, viz., the Central Motor vehicles Rules framed under S. 27 of the Act. As far as badge is concerned, R. 6 of the Kerala Rules alone is important. The State rules do not cover definitely, the area and the subjects covered by the Central Rules for issuance of licence, as rightly pointed out by the learned counsel for the respondents. Even though, Shri. Lal George submitted that the emphasis given with regard to the interpretation of S. 149(2) (a) (ii) in Swaran Singh's case (supra) cannot apply herein, we cannot agree. In that view of the matter, the insurance company will have to prove that absence of a badge was so a fundamental breach which has contributed to the cause of the accident. Therefore, any technical violation of the rules cannot help the insurance company in such cases. We are of the opinion that the view taken by the Apex Court in Swaran Singh's cases (supra) in sub-para (iv) of para 102, as already noted, and in light of the provision under S.149(2) (a) (ii) which uses the words "duly licenced", minor breach cannot help the insurance company to avoid liability.

26. In Iyyappan's case (2013 (3) KLT SN 32 (C.No. 33) (SC)= 2013 7 SCC 62), as we have already noticed, the intention of the legislature with regard to the provisions in Chapter XI has been examined and it was explained that the legislature has made third party insurance compulsory, so as to ensure that the victims of the accident could be *able to get compensation for the death or injuries suffered. In the light of the above principles, an interpretation of S. 149 of the Act commensurate with the legislative policy, will have to the adopted. The statute has provided the liability on the part of the insurer so as to pay compensation to third parties. Thus, it can be seen that as laid down by the decisions of the Apex Court, a more extensive remedy has been conferred upon those who have obtained judgments against the user of the vehicle. The question, therefore, will be whether the insurer can try to avoid liability without proving that the breach was so fundamental. In the light of the discussion made already, a mere technical violation like absence of a badge could not lead to such a situation, whereby the insurer can avoid liability of the third party. The scheme of the Act will have to be taken into consideration while testing the sustainability of the arguments raised by the Insurance Company. If that be so, we are of the view that the argument raised by the learned counsel for the insurance company cannot hold good. Therefore, the words "effective licence" in S. 3 cannot ipso facto come to the aid of the insurance company in such cases. The above interpretation will only serve the object and purpose of the enactment and in tune with the same. The dictum laid down in Iyyappan's case (2013 (3) KLT SN 32 (C. No. 33) (SC) = (2013) 7 SCC 62), therefore, will squarely apply herein. In the absence of any evidence to show that the breach was so fundamental in causing the accident, there cannot be any automatic direction in allowing the insurance company to recover the amount from the owner also".*

7. The said dictum squarely applies here. The driver was having licence as already noted and absence of badge cannot be

said to be so a fundamental breach. We therefore, allow the appeal and exonerate the appellant from liability to pay back the amount awarded, to the Insurance Company. The parties will suffer their costs in this appeal.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-
P.V.ASHA
(JUDGE)

AL/-

True copy

P.A. To Judge