IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

MACA.No. 2493 of 2012 ()

AGAINST THE AWARD IN OP(MV) 1620/2009 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM DATED 07-03-2012

APPELLANT/3RD RESPONDENT:

BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD
CHENNAI
REPRESENTED BY ITS ASSISTANT MANAGER (LEGAL), KALOOR
KOCHI-17.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS/RESPONDENTS 1 & 2:
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1. MANU
S/O.PURUSHOTHAMAN, SREEVILASAM, VELIYAM
POOYAPPALLY, KOLLAM, PIN-691537.

2. SAJEEV KUMAR,
S/O.RAMAKRISHNA PILLAI, VARIYANKALA VEEDU, VENDAR P.O.
PUTHUR, KOTTARAKKARA, PIN-691506.

R1 BY ADV. SRI.V.A.AJIVAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 12-01-2015 ALONGWITH M.A.C.A.NO.222/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JV

P.B.SURESH KUMAR, J.

M.A.C.A. No.2493 of 2012
&
M.A.C.A. No.222 of 2013

Dated this the 12th day of January, 2015

JUDGMENT

The common award in two applications for compensation before the Motor Accident Claims Tribunal is under challenge in these appeals preferred by the insurer in the applications.

2. A stage carriage bearing registration No.KL-2Q/1856 was involved in the accident which is the subject matter of the applications before the Tribunal. The accident took place on 01.03.2009. The claimants in the applications for compensation were passengers in the stage carriage. The contention raised by the insurer in the applications was that the second respondent who was driving the stage carriage at the time of accident did not possess the badge required under the Motor Vehicle Rules to drive the vehicle involved in the accident. At the same time, the fact that the driver of the vehicle possessed a valid driving licence at the time of accident was not disputed.

3. The Tribunal found that as per the terms of the policy

issued by the insurer, the driver of the vehicle was required to possess a badge. Despite the said finding, the Tribunal did not exonerate the insurer from the liability to indemnify the owner of the vehicle on the ground that the said breach of the terms of the policy is not a fundamental breach which had contributed the accident so as to exonerate the insurer from the liability to indemnify the owner of the vehicle. Consequently, the Tribunal directed the insurer to indemnify the owner of the vehicle for the compensation payable to the claimants.

4. The learned counsel for the appellant argued that insofar as it is found by the Tribunal that there was breach of the policy conditions, the insurer should have been granted permission to recover the compensation from the owner, after paying the same to the claimants.

5. In **National Insurance Co. Ltd. v. Jisha [2015(1) KLT 1]**, this Court had considered identical issue and held that in the absence of any evidence to show that the breach of the terms of the policy relied on by the insurer was so fundamental in causing the accident, there cannot be any automatic direction to permit the insurer to recover the compensation paid to the

claimants from the owner. Paragraphs 25 and 26 of the said judgment read thus:

> “25. 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 Balakrishan'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 a 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 case (supra) in sub-para (iv) of para 102, as already noted, and in the 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 be 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."

In the light of the aforesaid decision, there is no merit in these appeals and the same are, accordingly, dismissed.

SD/-
P.B. SURESH KUMAR,
JUDGE

JV