IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

MACA.No.2603 of 2012

OP (MV) NO.2358/2007 OF THE ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM.

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APPELLANT/2ND RESPONDENT IN (OPMV):

JAMES M.P,S/O.PAULO,MORALLY HOUSE,H.NO.3/245,
PULIYANAM,ANGAMALY.P.O,ERNAKULAM.

BY ADVS.SRI.JACOB P.ALEX
SRI.JOSEPH P.ALEX

RESPONDENT'S/PETITONER AND RESPONDENTS 1 & 3 (IN OPMV) :
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1. XAVIER T.L.,AGED 63 YEARS,S/O.LAWRENCE,
THERATHU HOUSE,H.NO.15/871,
BEACH ROAD,KOCHI-2,BEACH P.O.,
ERNAKULAM DISTRICT-682002.

2. FIROS.M.N,S/O.NASSAR.M.K,
MALIKAPURAYIL HOUSE,H.NO.2/55,
KALAVATHY,KOCHI-I,KALVATHY P.O.,
ERNAKULAM DISTRICT-682001.

3. ICICI LOMBARD GENERAL INSURANCE CO.LTD,
KANNAKERI ESTATE,3RD FLOOR,
SHANMUGHAM ROAD,MARINE DRIVE,
COCHIN,PIN-682031.

R3 BY ADV.SRI.R.AJITH KUMAR (128/84)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

pk

P.B.SURESH KUMAR, J.

M.A.C.A.No.2603 of 2012.

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Dated this the 8th day of April, 2015.

<u>J U D G M E N T</u>

The registered owner of a vehicle involved in an accident, which was the subject matter of a claim petition before the Motor Accidents Claims Tribunal, has come up in this appeal challenging the decision of the Tribunal in permitting the insurer of the vehicle to recover from him the the compensation paid to the claimant.

2. The first respondent filed the claim petition alleging that he sustained injuries in an accident took place on 10.7.2007 involving an autorikshaw owned by the appellant. Respondents 2 and 3 were the driver and insurer of the vehicle respectively. The claim petition was contested by the third respondent on the ground that there was no permit for the vehicle to operate as a transport vehicle at the time of the accident and therefore, they are entitled to

recover the compensation, if any, payable to the claimant from the appellant. The Tribunal accepted the contention raised by the third respondent and permitted them to recover the compensation directed to be paid to the claimant from the appellant.

3. Heard the learned counsel for the appellant.

4. It is beyond dispute that the vehicle at the time of the accident was covered by a valid insurance policy issued by the third respondent. As noticed above, it was the contention of the third respondent that the vehicle was not having the permit to operate as a transport vehicle at the time of the accident and thus the appellant has committed breach of the terms of the policy. Section 66 of the Motor Vehicles Act interdicts the owner of a vehicle from using the same as a transport vehicle in any public place, whether or not such vehicle is actually carrying any passengers or goods except otherwise than in accordance with the terms and conditions stipulated in the permit. Relying on the provisions contained in Section 66 of the Motor Vehicles Act,

this Court in ***Sethunath v. John Varghese*** (2011(1) KLT 222) held that the statutory thrust under Section 66 of the Motor Vehicles Act is against the user of the vehicle as a transport vehicle without permit. In other words, the view taken by this Court is that permit cannot be insisted for using the vehicle for any purpose other than for transport of passengers or goods. Paragraph 19 of the above judgment reads thus:

> "It may be true that S.66 interdicts the owner of a vehicle from using it as a transport vehicle in any public place, whether or not such vehicle is actually carrying any passengers or goods except otherwise than in accordance with the terms and conditions stipulated in the permit. A closer look at the above provisions will show that the statutory thrust is against user of a vehicle as a "transport vehicle" without a permit. It cannot be disputed that insurance policy had been issued to cover the risk of passengers to be carried in the vehicle for hire or reward. Therefore, expiry of validity of the permit will only mean that the vehicle cannot be used as a transport vehicle any more, unless the permit is renewed. Simultaneously operation of the policy to cover the risk of passengers being carried for hire or reward, will also cease. But in our view the policy will nevertheless cover the risk of third parties, especially if it is not established that the vehicle was being used as a transport vehicle at the time of the accident. The words "whether or not such vehicle is actually carrying any passengers or goods" in S.66 are obviously qua the permit and

not the policy."

Since the contention which was accepted by the Tribunal was raised by the third respondent, it was for them to establish the same by adducing evidence. If a permit is not required for the use of a vehicle otherwise than for transport of passengers or goods, it is for the insurer to establish that the vehicle at the time of accident was being used for transport of passengers or goods. In the instance case, no evidence was let in by the third respondent. There is nothing on record to indicate that the vehicle at the relevant time was being used for transport of passengers, for which a permit is required. The impugned award permitting the insurer to recover the compensation directed to be paid to the claimant, in the circumstances, needs to be interfered with.

5. In the result, the appeal is allowed. The direction in the impugned award permitting the insurer to recover the compensation paid to the claimant from the appellant is vacated. If the compensation paid to the claimant has

already been recovered from the appellant, it is for him to move the Motor Accidents Claims Tribunal for appropriate orders for restitution.

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

Kvs/-

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PA TO JUDGE.