IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

MACA.No. 2635 of 2012

OPMV 1152/2008 OF MOTOR ACCIDENTS CLAIMS TRIBUNALM, PALA DATED 19-05-2012
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APPELLANT(S)/3RD RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD.,
KANJIRAPPALLY, REPRESENTED BY ITS
ASSISTANT MANAGER REGIONAL OFFICE,
ERNAKULAM NORTH, KOCHI - 18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT(S)/CLAIMANT/R1 & R2/ ADDL. 4TH RESPONDENT:
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1. VARKEY THOMAS,
   PUTHUPARAMBIL, VELLANADY, MUNDAKAYAM P.O . - 686 513.

2. SUMA XAVIOUR,
   VALUPARAMBIL, MUNDAKKAYAM P.O. - 686 513.

3. PIOUS XAVIOUR,
   CHITTADIYIL HOUSE, CHELIKUZHY BHAGOM,
   MUNDAKKAYAM P.O. - 686 513.

4. PIOUSKUTTY,
   VADAKKEMUTHALAKKUZHIYIL (H),
   VII/93/A, MUNDAKKAYAM P.O. - 686 513.

R1 BY ADVS. SRI.SHAJI THOMAS
SRI.N.NAGARESH
SRI.BINU PAUL
SRI.T.V.VINU
R2 & R3 BY ADV. SRI.P.KURUVILLA JACOB

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05-08-2015, ALONG WITH MACA. 2636/2012 & MACA. 2637/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.B.SURESH KUMAR, J.

M.A.C.A. Nos.2635, 2636 & 2637 of 2012

Dated 5th August, 2015.

J U D G M E N T

The common insurer in three claim petitions arising out of the same accident before the Motor Accidents Claims Tribunal has come up in these appeals challenging the common award passed in the claim petitions.

2. The claimants sustained injuries in the accident took place on 1.6.2008 involving a jeep bearing Registration No.KL-5/E-8150. The fourth respondent in the appeals was arrayed in the claim petitions as the registered owner of the vehicle and the second respondent in the appeals was arrayed as the actual owner of the vehicle. The third respondent in the appeals was driving the vehicle at the time of the accident. The case of the claimants in the claim petitions was that they were travelling in the vehicle involved in the accident. Among them, the claimant in O.P.(MV).No.1120 of 2008 was the owner of the goods carried in the vehicle and the claimants in the remaining cases were his employees.

3. Though the appellant conceded that they had issued an insurance policy for the vehicle involved in the accident, they contested the claim petitions on the grounds mainly that the third respondent was not holding a driving licence at the time of the accident and that the policy issued by them does not cover the risk of the employees of the owner of the goods carried in the vehicle. In other words, according to them, they are liable to pay compensation only to the claimant in O.P.(MV).No.1120 of 2008 and that even the said amount is liable to be reimbursed by the registered owner of the vehicle.

4. The evidence in the case consists of the oral testimonies of the claimants as PW1 to PW3 and Exts.A1 to A15 on the side of the claimants and the oral testimonies of RW1 and RW2 and Exts.B1 and B2 on the side of the respondents.

5. The Tribunal rejected the contentions of the appellant and allowed the claim petitions directing the appellant to pay compensation to the claimants. The appellant is aggrieved by the said decision.

6. Before dealing with the contentions of the

appellant, it is necessary to consider the contention of the fourth respondent that he has no liability either to pay compensation to the claimants or to reimburse the compensation to the appellant as he had sold the vehicle involved in the accident to the second respondent long before the accident. The fourth respondent gave evidence in support of the said case as RW1. He had also produced the registration particulars of the vehicle as Ext.B1. Ext.B1 indicates beyond doubt that the registration of the vehicle was transferred to the name of the second respondent on 1.9.2007. It is thus evident that as on the date of accident, the second respondent was the registered owner of the vehicle. True, since the transfer was effected during the subsistence of the valid insurance policy, the second respondent is entitled to the benefit of the insurance coverage of the vehicle.

7. As noticed above, the main contention of the appellant is that the insurance policy issued by them does not cover the risk of the claimants other than the claimant in O.P.(MV).No.1120 of 2008. Going by the provisions contained in

Section 147 of the Motor Vehicles Act, a statutory policy issued as per the provisions of the Act would cover only the risks of either the owner of the goods or its authorised representative carried in the vehicle. As such, in so far as the owner of the goods was carried in the vehicle, he alone gets the benefits of the statutory policy. The specific contention of the remaining claimants is that a sum of Rs.75/- was collected by the appellant towards additional premium for non-fare passengers and therefore, they are also liable to be covered under the policy. The fact that the claimants referred to above can be considered as non-fare passengers in the vehicle is not disputed by the appellant. But the contention is that Rs.75/- collected by them represents only the premium payable for one non-fare passenger as per the tariff order applicable. The said fact is not disputed by the learned counsel for the appellant. In the circumstances, it can be held that one among the claimants in the remaining cases is also covered by the policy. Then the question is as to who can be extended the benefit of the policy. In a similar situation, the Apex Court in **National Insurance**

Co. Ltd. v. Anjana Shyam [2007(3) KLT 993 (SC)], took the view that the practical and proper course in such cases would be to hold that the Insurance Company is bound to cover the risk of the claimant who secured the highest among the awards and distribute the same among the claimants. I deem it appropriate to adopt the said course in this case also.

8. It was specifically contended by the appellant in the written objection filed before the Tribunal that the third respondent was not holding a driving licence to drive the vehicle involved in the accident. The said fact is not disputed either by the second respondent or by the fourth respondent. As such, it has to be held that the appellant is entitled to recover the compensation from the second respondent.

9. In the result, the award in OP (MV) No.1120 of 2008 is confirmed and the awards in OP (MV) No.1152 of 2008 and OP (MV) No.1119 of 2008 are modified directing the appellant to deposit the amount covered by the award OP (MV) No.1119 of 2008 before the Tribunal and directing the Tribunal to disburse the said amount equally among the claimants in OP

(MV) No.1152 of 2008 and OP (MV) No.1119 of 2008. The claimants in the said cases are free to recover the remaining amounts due to them under the awards from the second respondent. The appellant is also permitted to recover the compensation paid to the claimants from the second respondent. The Tribunal is directed release to the appellant the deposits made by them under section 173(2) of the Motor Vehicles Act.

The appeals are disposed of accordingly.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

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