IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

MACA.No. 599 of 2011

OPMV 1146/2007 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
DATED 31-12-2010
....

APPELLANT(S)/2ND RESPONDENT IN OP:

THE ORIENTAL INSURANCE CO.LTD.CHALAKKUDY
REPRESENTED BY THE AUTHORIZED SIGNATORY
THE ORIENTAL INSURANCE CO.LTD.REGIONAL OFFICE
METRO PALACE, ERNAKULAM NORTH, KOCHI-18

BY ADV. SRI.A.R.GEORGE

RESPONDENT(S)/CLAIMANT & 1ST RESPONDENT IN OP:
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1. KARTHU,W/O.CHENNAN, MANAPPILLY HOUSE,
   MELOOR-KALLUTHI DESOM, MELOOR VILLAGE-680 311.

2. MANOHARAN, S/O.KUNJAYAPPAN,
   PANAPARAMBIL HOUSE, KALLUTHI DESOM, MELOOR VILLAGE
   MELOOR P.O., MUVATTUPUZHA TALUK-680 311.

R2 BY ADV. SRI.P.K.VARGHESE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.B.SURESH KUMAR, J.

M.A.C.A.No.599 of 2011

Dated this the 23rd day of June, 2015

JUDGMENT

The insurer in a claim petition before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. The first respondent filed the claim petition referred to above alleging that she sustained injuries in the accident took place on 22-12-2006 involving a vehicle owned and driven by the second respondent. The appellant was the insurer of the vehicle. The second respondent remained ex parte. The appellant contested the claim petition, contending mainly that the second respondent was not holding a driving licence at the time of the accident; that the conduct of the second respondent in driving the vehicle

without a licence would amount to breach of the terms of the policy issued to him and that therefore they are not liable to indemnify the second respondent. In other words, according to the appellant, in the event of any compensation being granted to the first respondent, they should be permitted to recover the same from the second respondent.

3. No oral evidence is seen adduced in the claim petition by either of the parties. The documents produced by the first respondent were marked as Exts.A1 to A6 and the documents produced by the appellant were marked as Exts.B1 and B2. Among the documents produced by the appellant, Ext.B1 is the policy of insurance and Ext.B2 is the driving licence particulars of the second respondent.

4. A copy of the written statement filed by the appellant as also a copy of Ext. B2 were made available to me at the time of hearing. The written statement filed by the appellant indicates categorically that a specific contention was raised by them that the second respondent

was not holding a driving licence to drive the vehicle involved in the accident. Despite the said contention, the Tribunal has not framed any issue to adjudicate the said contention nor did it consider the said contention. Ext.B2 driving licence particulars of the second respondent indicates that he was holding a driving licence to drive the transport vehicle only till 12.9.2005. The accident in this case took place on 22-12-2006. Ext.B2 also indicates that the the said licence was later renewed by the second respondent only on 23-10-2009. In the light of the contention raised by the appellant as aforesaid and the documents referred to above, I am of the view that the issue concerning the liability of the appellant needs to be considered afresh by the Tribunal.

In the result, the appeal is allowed in part, the impugned award is set aside and the Tribunal is directed to consider the issue as to the right of the appellant to recover the compensation from the second respondent afresh, within a period of three months from today. In so far as the award in favour of the first respondent is not under challenge, it is made clear that notice need not be issued to the first respondent in the matter of deciding the issue as directed above.

P.B.SURESH KUMAR, JUDGE.

smm