IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

MACA.No. 1015 of 2011 ( )

OPMV 411/2005 OF ADDL.M.A.C.T, ERNAKULAM

APPELLANT/3RD RESPONDENT.:

NEW INDIA ASSURANCE COMPANY LTD.,
VELLAMATTAM ESTATE, RAVIPURAM, KOCHI.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS/CLAIMANT & R1 AND R2 :

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1. NOUFAL, S/O. ALI,
   AGED 26 YEARS, KOLLAMURY HOUSE, THAMMANAM
   POONITHURA VILLAGE - 682 317.

2. SAYYED HAMID, ASHIYANA,
   PULIPPARMBU HOUSE, OLLUKARA POST, ERNAKULAM DISTRICT - 682 011.

3. HUSSAIN, S/O. ABDUL AZIS,
   KOTHARATH HOUSE, PONNURUNNY, POONITHURA VILLAGE - 682 317.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.A.C.A. No.1015 of 2011

Dated 6th July, 2015.

J U D G M E N T

The insurer in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal. The first respondent filed the claim petition alleging that he sustained injuries in the accident took place on 28.8.2004, involving a vehicle owned by the second respondent and ridden by the third respondent. The appellant was the insurer of the vehicle. The appellant contested the claim petition mainly on the ground that the third respondent was not holding a driving licence and therefore, they have no liability to indemnify the second respondent. In other words, according to the appellant, in the event of any compensation being granted to the claimant, they should be permitted to recover the same from the owner of the vehicle. The Tribunal did not accept the said contention of the appellant and allowed the claim petition directing the appellant to pay the compensation to the claimant holding that the appellant has not established that the third respondent was not holding a driving licence as contended by them. The appellant is aggrieved by the said decision of the Tribunal.

2. Heard the learned counsel for the appellant.

3. A perusal of the the impugned award indicates that respondents 2 and 3 who are the owner and rider of the vehicle respectively did not contest the claim petition and consequently, they were set ex parte. The contention of the appellant was that for establishing the fact that the third respondent was not holding a driving licence, they have filed an interlocutory application before the Tribunal seeking orders directing the third respondent to produce his driving licence and the impugned award was passed without taking note of the said application.

4. This Court in an identical case in **Santhosh M.V. v. Binu P.C.** (2014(1) KHC 342) held that breach of the policy condition is a fact to be established by the insurer and they cannot claim exoneration from the liability by filing an application directing the driver of the vehicle to produce the

driving licence. It was also held by this Court in the said case that there shall be independent evidence to show that the driver of the vehicle was not holding a driving licence as on the date of the accident and in the absence of any independent evidence, the contention of this nature cannot be sustained. As noticed above, in the instant case, there is nothing on record to indicate that the third respondent was not holding a driving licence at the time of accident. In the said circumstances, in the light of the decision of this Court referred to above, I find no merit in this appeal and it is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)