IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

MACA. No. 374 of 2014 (B)

O.P.(MV) No.47/2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE

APPELLANT/1ST RESPONDENT :

ABDURAHIMAN ILLATHODI,
SUHARA MANZIL, MUSLIYARAKATH,
EDAKKARA P.O.,
MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SRI.K.RAKESH

RESPONDENTS/PETITIONER & RESPONDENTS 2 & 3 :
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1. MUSTAFA K., S/O.ABDURAHIMAN,
KARALANGOTTU HOUSE,
P.O., FEROKE COLLEGE,
PARUTHUIPPARA VIA,
KOZHIKKODE DISTRICT,
PIN - 673 632.

2. ABDUL JABBAR, S/O.MOOSA,
DEVALA BAZAR, KELAKU NELLIYALAM,
GUDALUR, THE NILGIRIS,
PIN - 643 211.

3. ICICI LOMBARD GENERAL INSURANCE CO.,
CITY PLAZA, 2ND FLOOR, YMCA CROSS ROAD,
KOZHIKODE, PIN - 673 001.

R3 BY ADV. SRI.R.AJITH KUMAR VARMA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 19-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ.

M.A.C.A.No. 374 of 2014

Dated this the 19th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The appeal is filed by the appellant, who is the owner of the vehicle, involved in the accident, aggrieved by the operative portion of the award, whereby the Tribunal after allowing the application filed by the claim for compensation and directing the insurance company to deposit the amount, allowed recovery from the appellant. The finding entered is that the driver was not having the licence for driving transport vehicle as on the date of accident as evident from Ext.B3, and it was obtained thereafter and thereby, it was held that the absence of badge is material and therefore, the liability is alleged.

2. We heard the learned Counsel on both sides.

3. The learned Counsel for the appellant submitted that the Tribunal ought to have relied upon the decision of the Apex Court in **National Insurance Company Ltd. v. Swaran Singh** [2004(1) KLT 781] in which it was held that inorder to constitute a violation of policy condition there should be proof of wilful violation of law by the assured. He also relied upon the judgments of this Court namely **Insurance Company Ltd.v.Anto Abraham** [2013 (4) KLT 700], **Balakrishnan A.V. v. K.Vijayamma** [2008(4) KLT

SN 81], **P.T.Moidu v. Oriential Insurance Company Ltd.** [2007 (4)KHC 385], **New India Assurance Company Ltd v. Balakrishnan** [2011(4) KLT 412] and contented that the absense of badge is not a fundamental breach of policy condition and unless there is a finding to the effect that the above breach was so material in contributing to the accident, the company is liable to indemnify.

4. A Full Bench of this Court in **National Insurance Co. Ltd. v. Jisha** [2015 (1) KLT 1(F.B.)] held that the absence of a badge cannot be said to be a fundamental breach which has contributed to the cause of the accident. It was further held that absence of badge will not absolve the insurance company from meeting the liability as it is purely technical. The learned Counsel for the Insurance Company, Sri. Ajith Kumar Varma submitted that in this case the charge sheet has been produced and after perusing the charge sheet the Tribunal found in favour of the insurance company. It is submitted that the second respondent, namely the driver, was charge sheeted for the offence punishable under Section 3(1) read with Section 181 of the Motor Vehicle Act along with Sections 279 and 338 of Indian Penal Code. Learned Counsel also relied upon the following judgments of this Court, to contend that the charge sheet is a reliable evidence. They are **National Insurance Co.Ltd. v. Ammini Amma** [2014 ACJ 927] & **New India Assurance Co.Ltd v. Pazhaniammal** [2011(3) KLT 648]. He also relied upon the

decision of a learned Single Judge of this Court in **National Insurance Co. Ltd., Manjeri v. Adbul Razaak** [2014(4)KHC 270]. We have gone through the judgments. It is true that even in this case, the charge sheet shows an offence charged against the driver. On the basis of the finding rendered by the Full Bench in National Insurance Company's case (Supra), the insurance company has to be held liable to indemnify the assured. Therefore, we allow the appeal and the operative portion of the award allowing the insursance company to recover the compensation from the appellant is deleted. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR, JUDGE

Sd/-
P.V.ASHA, JUDGE

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P.A.TO JUDGE