IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

MACA.No. 1836 of 2015

OP(MV) 1782/2002 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
PERUMBAVOOR DATED 24-10-2007

APPELLANT(S)/2ND RESPONDENT:

JOHN JOSEPH, S/O.JOSEPH,
MATTATHIL HOUSE, NELLAD JP.O.

BY ADV. SRI.MANSOOR.B.H.

RESPONDENT(S)/RESPONDENTS 1 & 3 & APPELLANT:
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1. JOY JOSEPH, S/O.JOSEPH,
PONGAMKUZHY HOUSE, VEETTOOR KARA,
NELLAD P.O., PIN-686669.

2. THE MANAGER,
UNITED INDIA INSURANCE CO.LTD.,
CHITTOOR BRANCH, PIN-682027.

3. JOSE K.CHACKO, S/O.CHACKO,
KANIYANKUDY PUTHENPURAYIL HOUSE,
NELLAD P.O., PIN-686669.

R2 BY ADVS. SMT.S.JAYASREE
SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

P.B.SURESH KUMAR, J.

M.A.C.A.No.1836 of 2015

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Dated this the 26th day of June, 2015

<u>JUDGMENT</u>

The 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.

2. The third respondent filed the claim petition alleging that he sustained injuries in the accident took place on 22-9-2007 involving a vehicle owned by the appellant and driven by the first respondent. The second respondent was the insurer of the vehicle. The appellant and the first respondent remained ex parte. The second respondent, the insurer of the vehicle, contested the claim petition contending among others, that though they have issued a policy to the

appellant for the vehicle involved in the accident, the same being a statutory policy, the claimant who was riding on the pillion of the motor cycle involved in the accident is not covered by that policy. The Tribunal accepted the contention of the second respondent and disposed of the claim petition directing the appellant to pay the compensation determined as due to the claimant. The appellant is aggrieved by the said decision of the Tribunal.

3. Ext.B1 is the policy of insurance issued by the second respondent to the appellant. A perusal of Ext.B1 policy indicates that the same was a comprehensive policy covering the risk of the pillion rider as well. In the light of the said policy, the decision of the Tribunal that the second respondent is not liable to indemnify the appellant is incorrect and unsustainable. A similar view has been taken by this Court in the decision reported in **New India Assurance Company Ltd. vs. Hydrose** [2008(3) KLT 778]

4. There was a delay of 441 days in filing the appeal. Similarly, there was a delay of 2153 days in representing the appeal after curing the defects. The applications filed by the appellant to condone the delay in filing the appeal as also in representing the appeal after curing the defects were allowed on condition that in the event of the appeal being allowed, it shall be the liability of the appellant to pay the interest on the amount of compensation granted to the claimant for the period of delay.

In the result, the appeal is allowed and the direction in the impugned award to the appellant to pay compensation determined as due to the claimant is vacated. Instead, the second respondent is directed to pay the compensation due to the claimant. Since the insurer cannot be fastened with the liability to pay interest for the period of delay in filing the appeal as also in representing the appeal, the insurer is exonerated from the liability to pay interest for the aforesaid periods of delay and the Tribunal is directed to appropriate the interest payable to the claimant on the amount of compensation for the periods of delay from the sum of Rs.25,000/- deposited by the appellant before the Tribunal as provided under Section 173(2) of the Act.

P.B.SURESH KUMAR, JUDGE.

smm