IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

MACA.No. 1407 of 2011 ( )

OPMV. NO.1308/2006 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA.
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APPELLANT/3RD RESPONDENT:

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

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA).

RESPONDENTS/RESPONDENTS 1 & 2:
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1. SULAIKHA HAMZA, W/O.HAMZA,
KIZHAKKE ANJIKKATTU HOUSE,
VADAKODE P.O., ERNAKULAM, PIN-682 021.

*2. SATHEESH, S/O.CHANDRAN, (DELETED)
BHULEPADATH HOUSE, NEAR NAD QUARTERS,
SANTHIGIRI, THRIKKAKARA P.O.,
ERNAKULAM, PIN-682 021.

* RESPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY
AT THE RISK OF THE APPELLANT AS PER THE ORDER
DATED 19/08/2015 IN MACA NO.1407/2011.

R1 BY ADV. SRI.K.B.RAJESH.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

P.B.SURESH KUMAR, J.

M.A.C.A.No.1407 of 2011

Dated this the 21st day of August, 2015

JUDGMENT

The insurer in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. One Sony Varghese filed the claim petition before the Tribunal, alleging that he sustained injuries in the accident took place on 28.1.2006, involving a vehicle owned by the first respondent and driven by the second respondent. The appellant was the insurer of the vehicle involved in the accident. The appellant contested the claim petition, contending among others, that the second respondent was not holding a licence to drive the vehicle involved in the accident and as such, they are entitled to

recover the compensation, if any, payable to the claimant from the first respondent. The Tribunal allowed the claim petition and permitted the claimant to recover the compensation from the insurer. The contention raised by the appellant has not been considered. The insurer, in the circumstances, is aggrieved by the said decision of the Tribunal and hence this appeal.

3. Heard the learned counsel for the appellant and the learned counsel for the first respondent.

4. Ext.B1 is the policy of insurance issued by the appellant to the first respondent. The fact that Ext.B1 contains the clause to the effect that the vehicle should be driven by a person authorised to drive the vehicle is not in dispute. Ext.A2 is the charge sheet in the case registered by the police in connection with the accident. In Ext.A2, it is alleged that the second respondent is guilty of the offence punishable under Section 3(1) of the Motor Vehicles Act for having driven the vehicle without having a valid licence.

This Court in ***National Insurance Co.Ltd vs. Ammini Amma*** [2013 (4) KLT 676] held that a charge sheet in a case of this nature can be relied upon to decide the issue as to whether there was contumacious conduct on the part of the owner of the vehicle in allowing the driver to drive the vehicle without a valid driving licence. In the light of the said decision of this Court, the impugned award is liable to be modified.

In the result, the appeal is allowed in part and the impugned award is modified permitting the appellant to recover the compensation from the first respondent.

P.B.SURESH KUMAR, JUDGE.

smm