

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

MACA.No. 2000 of 2015

**AWARD DATED 18-05-2007 IN OPMV 466/2003 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL, THRISSUR**
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APPELLANT(S)/1ST RESPONDENT:

**JOHN THIMOTHY C., AGED 48 YEARS,
S/O. THIMOTHY CHAKKALAKKAL HOUSE,
NEAR ASRAMAM PARALAM P.O.,
VENGINISSERY, THRISSUR - 680 575.**

**BY ADVS.SRI.C.HARIKUMAR
SRI.RENJITH RAJAPPAN**

RESPONDENT(S)/RESPONDENTS 2 & 3 AND PETITIONER:

- 1. ARAVINDAKSHAN,
S/O. SANKARAN, KOCHATH HOUSE, CHERROR P.O.,
THRISSUR - 680 008.**
- 2. UNITED INDIA INSURANCE CO. LTD.,
PARK HOUSE, ROUND NORTH, THRISSUR - 680 001.**
- * 3. P.O.JOHNY,
S.O OUSEPH, PORATHUKKARAN HOUSE,
P.O. KODANNUR THRISSUR - 680 505.**
- * R3 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT
AS PER ORDER DTD.21.8.2015 IN IA.2953/2015.**

**R1 BY ADV. SMT.SANU S. MALAKEEL
R2 BY ADV. SRI.UNNI K.K. (EZHUMATTOOR)**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 22-09-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

P.B.SURESH KUMAR, J.

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M.A.C.A.No.2000 of 2015.

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Dated this the 22nd day of September, 2015.

J U D G M E N T

The driver of a vehicle involved in an accident which was the subject matter of a claim petition before the Motor Accidents Claims Tribunal is the appellant in this appeal which is instituted challenging the award in the claim petition.

2. The claim petition was filed by one P.O.Johny alleging that he sustained injuries in the accident took place on 8.2.2003 involving a vehicle driven by the appellant. The appellant remained ex-parte. The insurer of the vehicle admitted the insurance coverage of the vehicle at the time of accident. However, they contended that in so far as the vehicle was not having a valid fitness certificate at the time of accident, they are entitled to recover the compensation

from the appellant. The basis of the said contention is that the policy of insurance was issued by them subject to the said condition. The Tribunal accepted the said contention raised by the insurer and while passing the award in favour of the claimant, permitted the insurer of the vehicle to recover the compensation from the appellant. The appellant is aggrieved by the decision of the Tribunal.

3. Heard the learned counsel for the appellant and also the learned counsel for the second respondent, the insurer of the vehicle.

4. In **Augustine v. Ayyappandkutty** [2015(2) KLT 139 (F.B.)], a Full Bench of this Court held that the insurer in a proceedings for compensation before the Motor Accidents Claims Tribunal is not liable to be exonerated from the liability to indemnify the owner on the ground that the vehicle was not having a valid fitness certificate at the time of accident. In the light of the said decision of this Court, the direction in the impugned judgment permitting

the insurer of the vehicle to recover the compensation paid to the claimant from the driver of the vehicle is unsustainable.

5. In the result, the appeal is allowed and the direction contained in the impugned award permitting the insurer of the vehicle to recover the compensation paid to the claimant from the appellant is set aside.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE