

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

MACA.No. 1118 of 2014

**APPEAL AGAINST THE AWARD DATED 30-01-2013 OPMV 1187/2006 OF MOTOR
ACCIDENTS CLAIMS TRIBUNAL, THALASSERY**

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APPELLANT(S)/2ND RESPONDENT IN THE O.P.(MV) AS PER AMENDMENT

DATED 16.02.2012 IN I.A.NO.798/2012:

**THE UNITED INDIA INSURANCE CO. LTD.,
KANNUR BRANCH,
REPRESENTED BY THE DY. MANAGER,
UNITED INDIA INSURANCE CO.LTD.,
OFFICE OF THE REGIONAL MANAGER, HOSPITAL ROAD,
ERNAKULAM.**

BY ADV. SRI.M.A.GEORGE

RESPONDENT(S)/PETITIONER & RESPONDENT 1 IN THE O.P.(M.V.):

- 1. KOUSALYA,
D/O.GOPALAN, MYKOTTAKARA HOUSE, P.O.VEEPAD,
ARAIAM - 683 510.**
- 2. SUMAN @ K.P. SUMESH,
S/O.PADMANABHAN, KUNHIMANATH HOUSE, P.O.VEEPAD,
ARAIAM - 683 510.**
- 3. K.P.SUMESH,
S/O.PADMANABHAN, (DELETED), KUNHIMANATH HOUSE,
P.O.VEEPAD, ARAIAM - 683 510.**

R2 BY ADV. SRI.CIBI THOMAS

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 20-05-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

M.A.C.A.No.1118 of 2014.

Dated this the 20th day of May, 2015.

J U D G M E N T

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. The first respondent filed the claim petition alleging that she has sustained injuries in an accident took place on 17.11.2002, involving an autorikshaw owned and driven by the second respondent. The second respondent did not contest the claim petition. The appellant, insurer of the vehicle involved in the accident, contested the claim petition, contending mainly that the second respondent was not holding a licence to drive the vehicle at the time of accident. In support of the said contention, the insurer has also produced the driving licence particulars of the second respondent as obtained by them from the competent

authority, before the Tribunal. Ext.B1 is the driving licence particulars of the second respondent. The Tribunal found that the second respondent obtained licence to drive the vehicle only with effect from 28.1.2003. Nevertheless, the Tribunal fastened the liability to pay compensation to the claimant on the insurer on the ground that Ext.B1 cannot be accepted as a genuine document. According to the Tribunal, authorisation to drive transport vehicle was also issued to the second respondent with effect from 28.1.2003 as per Ext.B1 and had he not possessed a licence to drive the vehicle prior to the period referred to in Ext.B1, he would not have been issued the authorisation to drive the transport vehicle. In other words, the Tribunal presumed that the second respondent was holding a licence prior to 28.1.2003 also and it was on that basis, the Tribunal rejected the contention of the insurer. The insurer is aggrieved by the said decision of the Tribunal.

3. The learned counsel for the appellant pointed out that in the absence of any material to show that the second

respondent was holding any licence prior to 28.1.2003, the insurer should have been given permission to recover the compensation from the second respondent, the owner and driver of the vehicle involved in the accident.

4. As noticed above, the second respondent has not contested the application by filing a written statement. Ext.B1 driving licence particulars produced by the insurer would indicate that the second respondent was issued a licence to drive autorikshaw only from 28.1.2003. It is seen from Ext.B1 that the second respondent had passed the test for obtaining the licence only on 28.1.2003. As such, there is absolutely no basis for the presumption drawn by the Tribunal that the second respondent would have been holding licence prior to 28.1.2003. In the absence of any material to show that the second respondent was holding a licence to drive the vehicle involved in the accident prior to 28.1.2003, the Tribunal was not justified in presuming that the second respondent would have been holding licence to drive the vehicle as on the date of accident. The decision of

the Tribunal to that extent is incorrect and unsustainable.

In the result, this appeal is allowed. The impugned award is modified and the appellant is permitted to recover the compensation paid to the claimant from the second respondent.

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

Kvs/-

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PA TO JUDGE.