

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

MACA.No. 1909 of 2011 ()

AGAINST THE AWARD IN OPMV 416/2005 of M.A.C.T., PALAKKAD DATED 30-11-2010

APPELLANTS/RESPONDENTS 1 AND 2:

- 1. KRISHNA SWAMI**
AGED 47, S/O.RAKKIAYAPPAN GOUNDAR, KARUPPALLI,
THORAIKALAM, MEENAKSHIPURAM, CHITTUR
PALAKKAD-678 633.
- 2. PERUMAL**
AGED 26 YEARS, S/O.RAMASWAMY, R.P. COLONY,
MEENAKSHIPURAM, CHITTUR, PALAKKAD DISTRICT-678 533.

BY ADV. SRI.K.P.BALAGOPAL

RESPONDENTS/PETITIONER & 3RD RESPONDENT:

- 1. KANNIESWARAN,**
AGED 25 YEARS, S/O.RAMASWAMY GOUNDER
RESIDING AT KANNIMARI, PATTANCHERRY VILAGE, CHITTUR
PALAKKAD-678 532.

- 2. THE NEW INDIA ASSURANCE COMPANY LIMITED,**
M.A. LANE, T.B.ROAD, PALAKKAD-678 001.

R2 BY ADVS. SRI.RENI ANTO KANDAMKULATHY
SRI.P.G.GANAPPAN
SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VPV

P.B.SURESH KUMAR, J.
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M.A.C.A.No.1909 of 2011
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Dated this the 22nd day of January, 2015

JUDGMENT

The owner and driver of the vehicle involved in an accident, who were respondents in a proceeding for compensation before the Motor Accidents Claims Tribunal, are the appellants in this appeal. They are aggrieved by the direction issued by the Tribunal permitting the insurer of the vehicle to recover from them the compensation granted to the claimant.

2. The first respondent claimed compensation alleging that he sustained injuries in the accident took place on 23.10.2004, involving the motor cycle owned by the first appellant and driven by the second appellant at the time of the accident. The second respondent, who was the insurer of the vehicle, contended before the Tribunal that the second appellant was not holding a valid driving licence to drive the vehicle at the time of accident and therefore, they are entitled to recover from the appellants the compensation, if any, granted to the claimant. They also filed an application as I.A.No.1835 of 2008 before the Tribunal seeking directions to the second appellant to produce the original of his

driving licence before the Tribunal. The Tribunal though directed the second appellant to produce his driving licence as per an order passed in the said Interlocutory Application, the second appellant did not produce the original of his driving licence before the Tribunal. In the circumstance, the Tribunal permitted the insurer to recover the compensation granted to the claimant from the appellants on the premises that the second appellant was not holding a valid driving licence at the time of accident. The correctness of the said direction in the award of the Tribunal is under challenge in this appeal.

3. Heard the learned counsel for the appellants as also the learned counsel for the second respondent.

4. In the written statement filed by the appellants before the Tribunal, it is categorically asserted that the second appellant was holding a valid driving licence at the time of accident. Along with the written statement, a photocopy of the driving licence was also produced. True, the original of the driving licence was not produced by the second appellant when directed by the Tribunal as per order on I.A.No.1835 of 2008. However, the appellants have produced the original of the driving licence of the second appellant in this appeal along with a memo dated 15.1.2015. They have also filed I.A.No.279 of 2015 seeking orders to admit the driving licence in

evidence in this appeal. It was submitted by the learned counsel for the appellants that the original of the driving licence could not be produced as directed by the Tribunal on account of a communication gap between the appellants and their lawyer before the Tribunal. Since the original of the driving licence is a document required to be carried by the person concerned while driving the vehicle, the second appellant cannot be blamed for having not produced the original of the driving licence before the Tribunal. The explanation offered by the learned counsel for the appellants for not producing the original of the driving licence when directed by the Tribunal also appears to be plausible. In the circumstance, I have allowed I.A.No.279 of 2015 by a separate order and the original driving licence of the second appellant was admitted in evidence in this appeal.

5. I have perused the original of the driving licence and it is seen that the second appellant was holding a valid driving licence at the time of accident. In so far as it is found that the second respondent was holding a valid driving licence at the time of accident, the impugned direction in the award permitting the insurer to recover the compensation granted to the claimant from the appellants is liable to be vacated.

In the result, the appeal is allowed and the award impugned is

set aside to the extent it permits the second respondent to recover from the appellants the compensation granted to the claimant. The Registry is directed to return the original of the driving licence to the appellants, after retaining a copy thereof.

Sd/-

**P.B.SURESH KUMAR
JUDGE**

/true copy/

P.A. to Judge

vpv