IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

MACA.No. 2311 of 2013 ()

AGAINST THE AWARD IN OPMAC 674/2011 of M.A.C.T. TIRUR DATED 21-07-2012

APPELLANT/1ST RESPONDENT:

K.V. CHANDRAN, S/O.CHOYI
KODALATH VALAPPIL HOUSE, NADUVATTOM PO
KUTTIPURAM TIRUR, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS/PETITIONERS & 2ND RESPONDENT:
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1. UMMERIYAKUTTY @ UMMERIYA UMMA
W/O.LATE YOOSAF HAJI, PARAPPARA HOUSE
NADUVATTOM PO KUTTIPURAM, MALAPPURAM DISTRICT
PIN-679 571.

2. ISMAIL
S/O. LATE YOOSAF HAJI, PARAPPARA HOUSE
NADUVATTOM PO KUTTIPURAM, MALAPPURAM DISTRICT
PIN-679 571.

3. MOIDEEN
S/O. LATE YOOSAF HAJI, PARAPPARA HOUSE
NADUVATTOM PO KUTTIPURAM, MALAPPURAM DISTRICT
PIN-679 571. (DELETED)

4. HUSSAIN
S/O. LATE YOOSAF HAJI, PARAPPARA HOUSE
NADUVATTOM PO KUTTIPURAM, MALAPPURAM DISTRICT
PIN-679 571.

5. SAIDALAVI
S/O. LATE YOOSAF HAJI, PARAPPARA HOUSE
NADUVATTOM PO KUTTIPURAM, MALAPPURAM DISTRICT
PIN-679 571.

6. JAMALUDHEEN
S/O. LATE YOOSAF HAJI, PARAPPARA HOUSE
NADUVATTOM PO KUTTIPURAM, MALAPPURAM DISTRICT
PIN-679 571. (DELETED)

7. ABDUL RAZAK
S/O. LATE YOOSAF HAJI, PARAPPARA HOUSE
NADUVATTOM PO KUTTIPURAM, MALAPPURAM DISTRICT
PIN-679 571. (DELETED)

8. M/S.ORIENTAL INSURANCE COMPANY LTD.
BRANCH OFFICE, C.K.H.BUILDING, THAZHEPALAM
TIRUR PIN-676 101.

(RESPONDENTS 3, 6 AND 7 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED 12.6.2014 IN I.A.NO.1535/2014.)

R8 BY ADV. SRI GEORGE CHERIAN(SR) (B/O, NO MEMO)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.
- -
M.A.C.A.No.2311 OF 2013
- -
Dated this the 30th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the first respondent before the Tribunal. The area of challenge is one concerning the direction issued by the Tribunal in the award, permitting recovery of compensation from appellant by the insurance company after making payment. Even though there is a valid insurance policy and the insurance company is liable to pay award amount to the claimant, it is contended that they are permitted to recover the amount from the first respondent-appellant, without any justification.

2. We heard the learned counsel for the appellant and the learned counsel for the Insurance Company.

3. It is submitted by the learned counsel for the appellant that a Full Bench of this Court in **National Insurance Co. Ltd. v. Jisha (2015(1) KLT 1(F.B.)** has held that the absence of badge is not a

fundamental factor, leading to the violation of the policy and therefore the issue is covered in favour of the appellant.

4. We extract herein below paragraph 26 of the judgment of the Full Bench cited above :

> "26. In **Iyyappan's case** {(2013) 7 SCC 62}, as we have already noticed, the intention of the legislature with regard to the provisions in Chapter XI has been examined and it was explained that the legislature has made third party insurance compulsory, so as to ensure that the victims of the accident could be able to get compensation for the death or injuries suffered. In the light of the above principles, an interpretation of Section 149 of the Act commensurate with the legislative policy, will have to be adopted. The statute has provided the liability on the part of the insurer so as to pay compensation to third parties. Thus, it can be seen that as laid down by the decisions of the Apex court, a more extensive remedy has been conferred upon those who have obtained judgments against the user of the vehicle. The question, therefore, will be whether the insurer can try to avoid liability without proving that the breach was so fundamental. In the light of the discussion made already, a mere technical violation like

> absence of a badge could not lead to such a situation, whereby the insurer can avoid liability of the third party. The scheme of the Act will have to be taken into consideration while testing the sustainability of the arguments raised by the insurance company. If that be so, we are of the view that the argument raised by the learned counsel for the insurance company cannot hold good. Therefore, the words “effective licence” in Section 3 cannot ipso facto come to the aid of the insurance company in such cases. The above interpretation will only serve the object and purpose of the enactment and in tune with the same. The dictum laid down in **Iyyappan's case** {(2013) 7SCC 62}, therefore, will squarely apply herein. In the absence of any evidence to show that the breach was so fundamental in causing the accident, there cannot be any automatic direction in allowing the insurance company to recover the amount from the owner also.”

5. The vehicle herein is a mini lorry bearing Reg.No.KL 10Q/3294. It was contended by the Insurance Company that the driver was not having a valid and effective driving licence to drive the mini lorry as it was a transport vehicle. The driving licence has been marked as Ext.B3. On a verification of the same, the Tribunal took the view

that it will reveal that at the time of the accident, the first respondent was not having badge to drive the mini lorry. The appellant herein therefore contends that as the absence of badge is not a fundamental factor as held by the Full Bench, the said finding cannot be supported.

We hold that in the light of the declaration of the legal position by the Full Bench in the above quoted decision, the appellant is entitled to succeed. The appeal is allowed. The portion in paragraph 10 of the award allowing the Insurance Company to recover the amount paid to the claimant from the appellant is deleted. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

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