IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

MACA.No. 996 of 2009

OPMV 893/2003 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA DTD.28.6.2008

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APPELLANT(S)/3RD RESPONDENT:

NATIONAL INSURANCE COMPANY LTD.,
KAYAMKULAM, REP. BY ITS MANAGER.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENT(S)/CLAIMANT AND R1 & 2:

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1. SUDHAKARAN, S/O.PADMANABHAN,
   THAIKKOOTTATHIL, WARD NO.9,
   KARTHIKAPALLY GRAMA PANCHAYATH, ALAPPUZHA DISTRICT.

2. RAJU, S/O.RAGHAVAN, MENAMPARAMBIL,
   MAHADEVIKAD MURI, WARD NO.9, KARTHIKAPPALLY,
   GRAMA PANCHAYATH, ALAPPUZHA DISTRICT.

3. GRACEKUTTY, ALUMPALLIL PUTHENVEEDU,
   PAZHAKULAM POST, ALAPPAUZHA DISTRICT.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.B.SURESH KUMAR, J.

M.A.C.A.No.996 of 2009

Dated this the 22nd day of June, 2015

JUDGMENT

The insurer in a claim petition 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 he sustained injuries in the accident took place on 26.11.2002 involving a vehicle owned by the third respondent and driven by the second respondent. The first respondent was riding on the pillion of the motor cycle involved in the accident. The appellant contested the claim petition, contending among others, that the policy of insurance issued by them to the third respondent was only a statutory policy and the said policy does not cover the risk of the pillion rider of the vehicle. The

Tribunal though found that the policy issued by the appellant does not cover the risk of the claimant, directed the appellant to pay the compensation determined as due to the claimant. The Tribunal, however, permitted the appellant to recover the compensation from the owner. The appellant is aggrieved by the said decision of the Tribunal. Hence this appeal.

3. In the light of the finding rendered by the Tribunal that the policy issued by the appellant to the third respondent was only a statutory policy not covering the risk of the pillion rider, the appellant has no liability to indemnify the owner of the vehicle. If the appellant has no liability to indemnify the owner of the vehicle, they cannot be directed to pay compensation to the claimant and then recover the same from the owner. Such a direction can be issued only in a case where the policy of insurance covers the risk of the victim of the accident and the insurer proves that there has been a breach of the terms of the policy on the part of the owner of the vehicle. In the instant case, the contention of the appellant is that they have no liability at all to indemnify the owner of the vehicle. In such cases, the insurer cannot be fastened with the

liability to pay the compensation to the claimant and then recover it from the owner of the vehicle.

In the result, the appeal is allowed and the direction in the impugned award that the appellant shall pay the compensation to the claimant and then recover the same from the third respondent is vacated. Needless to say, the claimant is entitled to recover the compensation from the third respondent, the owner of the vehicle.

P.B.SURESH KUMAR, JUDGE.

smm