

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

MACA.No. 2488 of 2015

**OP(MV) 341/2008 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,
MUVATTUPUZHA, DATED 21-01-2013**

APPELLANT(S)/1ST RESPONDENT:

**JIBIN, S/O.KURIAKOSE, MOLATH HOUSE,
PLAMUDY P.O., KOTTAPPADY,
KOTHAMANGALAM.**

**BY ADVS.SRI.T.K.KOSHY
SRI.ABE RAJAN**

RESPONDENT(S)/2ND RESPONDENT:

**THE ORIENTAL INSURANCE CO. LTD.,
BRANCH OFFICE, EBENEZER GARDEN,
KOCHI-682024.**

**BY ADV. SRI.PMM.NAJEEB KHAN
SMT.K.S.SANTHI**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

M.A.C.A.No.2488 of 2015

Dated 9th October, 2015.

J U D G M E N T

The owner-cum-driver of a vehicle involved in an accident, which was the subject matter of a claim petition before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. One Jayakumar filed the claim petition, alleging that he sustained injuries in the accident took place on 11.11.2007 involving an autorikshaw owned and driven by the appellant. The respondent was the insurer of the vehicle. The respondent contested the claim petition on the ground that the appellant who was driving the autorikshaw at the time of accident was not holding a badge required to drive the said transport vehicle and therefore, they are entitled to recover from the appellant the compensation, if any, payable to the

claimant. The Tribunal accepted the contention raised by the respondent and permitted them to recover the compensation directed to be paid to the claimant from the appellant. The appellant is aggrieved by the said decision of the Tribunal.

3. Heard the learned counsel for the appellant as also the learned counsel for the respondent.

4. A Full Bench of this Court has held in **National Insurance Company Ltd. v. Jisha** (2015(1) KLT 1) that the insurer of a vehicle involved in an accident is not liable to be exonerated from the liability to indemnify the owner for the reason that the driver of the vehicle was not holding a badge to drive the transport vehicle involved in the accident. In the light of the said decision of the Full Bench, the impugned award is liable to be interfered with.

In the result, the appeal is allowed and the direction in the impugned award permitting the respondent to recover the compensation from the appellant is vacated. The Tribunal is directed to release the statutory deposit made by the appellant under Section 173 of the Motor Vehicles Act. All the

interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)