IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

MACA.No. 2370 of 2013

AWARD DATED 19-07-2013 IN OPMV 1859/2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, NEYYATTINKARA
....

APPELLANT(S)/2ND RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD.,
METRO PALACE, GROUND FLOOR, OPP. NORTH RAILWAY STATION,
ERNAKULAM,
REPRESENTED BY ITS DULY AUTHORIZED OFFICER.

BY ADV. SRI.VPK.PANICKER

RESPONDENT(S)/PETITIONER AND 1ST RESPONDENT:
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1. PRASAD KUMAR,
   S/O. VELAPPAN, GIRIJA VILASOM, PUNNAKKULAM,
   KOTTUKAL P.O., NEYYATTINKARA-695 501.

2. RATHEESH KUMAR N.,
   7/27, NATARAJA MANDIRAM, CHOWARA,
   KOTTUKAL, THIRUVANANTHAPURAM-695 501.

3. RATHEESH KUMAR N.,
   7/27, NATARAJA MANDIRAM, CHOWARA,
   KOTTUKAL, THIRUVANANTHAPURAM-695 501.

R2 BY ADV. SRI.R.T.PRADEEP

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

msv/

P.B.SURESH KUMAR, J.

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M.A.C.A.No.2370 of 2013

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Dated this the 10th day of September, 2015

JUDGMENT

The insurer in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. The accident occurred on account of the collision of two motorcycles. The claimant was the pillion rider of one of the motorcycles involved in the accident. The claim petition was preferred against the owner, driver and the insurer of the vehicle in which the claimant was riding. The first respondent was the claimant. The second respondent was the owner of the vehicle. The appellant was the insurer of the vehicle. The appellant contested the claim petition on the ground that the claimant who is a gratuitous passenger in the vehicle is not covered by the statutory policy issued by them. The Tribunal rejected the contention of the

appellant and directed them to pay compensation to the claimant. The appellant is aggrieved by the decision of the Tribunal.

3. Heard the learned counsel for the appellant and the learned counsel for the second respondent.

4. Ext.B1 is the insurance policy issued by the appellant for the vehicle. Ext.B1 is a statutory policy. As per Ext.B1, in addition to the basic premium payable for the third party coverage, a sum of Rs.50/- has been collected towards personal accident coverage and another sum of Rs.48/- has been collected towards extra loading. It is endorsed in Ext.B1 that the personal accident coverage is for the owner and the driver of the vehicle. The Tribunal took the view that the additional premium collected towards extra loading can only be for the coverage of the risk of the pillion rider and it is on that basis, the impugned award was passed directing the appellant to pay compensation to the claimant.

5. This Court in MACA.No.1632 of 2011 has accepted the stand taken by the appellant that the premium collected in a statutory policy towards extra loading is the additional premium payable to obtain a statutory policy when there was an adverse claim during the previous year and that it has nothing to do with the coverage of the pillion rider. In the light of the said decision of this Court, the impugned award is liable to be interfered with.

In the result, the appeal is allowed and the impugned award is set aside to the extent it directs the appellant to pay compensation to the first respondent. It is made clear that the first respondent is free to recover the compensation determined as due from the second respondent.

Sd/-

P.B.SURESH KUMAR,
(JUDGE)

Kvs

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PA TO JUDGE.