IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

MACA.No. 2654 of 2015 ()

AGAINST THE AWARD IN OPMV 612/2011 of MACT PALA DATED 10-03-2014
APPELLANT(S)/RESPONDENT NOS.1 & 2:
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1. SABU RAJAN AGED 48 YEARS
S/O.NARAYANAN, KOCHUKUPPIL HOUSE, K.S.PURAM KARA
ARUNOOTIMANGALAM.P.O., KADUTHURUTHY VILLAGE
KOTTAYAM DISTRICT.

2. RAJU AGED 42 YEARS
S/O.C.C.NARAYANAN, CHULAYIKOTTIL HOUSE
ARUNOOTIMANGALAM.P.O., KADUTHURUTHY
KOTTAYAM DISTRICT.686 609.

BY ADV. SRI.SAJIV.C.K.

RESPONDENT(S)/PETITIONER/RESPONDENT NO.3:
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1. JAKKAN @ SHAKKEN
S/O.PERUMAL, 7, SETTIAPETTI COLONY
THOTTAPPANACKAMOOR PANCHAYATH, USALAPPETTY TALUK
MADURAI DISTRICT, TAMILNADU.

2. THE MANAGER
UNITED INDIA ASSURANCE CO. LTD.
DEIVASHAHAYAM BUILDING, PONKUNNAM.

R BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.R.RAMACHANDRA MENON
&
K.HARILAL, JJ.
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M.A.C.A.No.2654 of 2015

Dated this the 6th day of October, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

This appeal has been preferred by the respondents 1 and 2 in O.P.(M.V)No.612/2011 of the Motor Accidents Claims Tribunal,Pala. The first appellant is the driver of vehicle bearing no. KL-36-5220 and the second respondent is the registered owner. The vehicle got involved in a road traffic accident occurred on 28.10.2010 causing injuries to a pedestrian, which was sought to be compensated by filing the claim petition before the Tribunal. It is seen that the appellants did not choose to contest the matter and were set ex parte.

2. The second respondent Insurance Company contented that the driver of the vehicle did not had a valid Driving License and Badge at the relevant time. It is also seen that I.A.No.3309/2015 was filed by the Insurance Company to cause production of the driving license. Despite service of notice, the same was not produced and hence adverse inference was caused to be drawn. The evidence before the Tribunal consists of the oral deposition of PW1, Exts.A1 to A10 produced from the part of the claimant and Ext.X1 Disability Certificate. Based on the pleadings and materials on record, the Tribunal held that the accident was solely because of

the rash and negligent driving of the vehicle involved. A total compensation of Rs.1,59,988/- was awarded, which was directed to be satisfied with interest at the rate of 7.5% per annum from 6.8.2011 within three months; failing which it was to carry interest at the rate of 9%. Observing that, the Driving License was not produced, the Insurance Company was set at liberty to have the amount recovered from the respondents 1 and 2 before the Tribunal.

3. The Insurance Company satisfied the due amount and proceeded with the recovery proceedings. This made the appellants to approach this Court by filing the appeal with a petition to condone the delay of 450 days in filing the same. The application to condone the delay is vehemently opposed from the part of the Insurance Company, pointing out that no satisfactory explanation is offered. The factum of existence of a valid Driving License and the coverage under the policy have been asserted by the appellants in the affidavit in support of the application to condone the delay. It is also stated that the matter was entrusted with a lawyer and since the vehicle was covered by a valid policy, and since the driver was having a valid Driving License, no further follow up action was taken and the appellants were under the bonafide impression that the matter would be defended properly. It was only on facing the recovery proceedings that the appellants realized the actual state of affairs, thus rushing to this Court by filing the appeal.

4. A copy of the Driving License has been produced as Annexure 1 and a copy of the statutory deposit receipt is produced as Annexure 2, along with I.A.No.3308/2015 to accept the said additional documents. After hearing both the sides, we have allowed the said applications by way of separate orders. The learned counsel appearing for the Insurance Company submits that, pursuant to the order dated 22.9.2015 passed by this Court, the factual particulars with regard to the license got verified. It has been revealed that the first appellant/driver of the vehicle was having valid Driving License at the relevant date as borne by Annexure A1. But since the first appellant/first respondent did not choose to contest the matter by filing any written statement and further since the license was never produced before the Tribunal, despite the order passed by the Tribunal in I.A.No.3309/2015, much loss and hardship have been caused to the Insurance Company and the appeal itself has been filed belatedly, seeking to condone the delay of 450 days (which has been condoned as per separate orders).

5. The learned counsel for the appellant however submits that the particulars of the Driving License (bearing no.36/34/1988) which was valid from 24.11.2009 to 23.11.2012 with Badge no.36/71/1989 were clearly given in the claim petition itself. A certified copy of the claim petition obtained from the Tribunal is placed for perusal of this Court and on going through the same, this Court finds that the version of the appellant is fully correct. If this

be the position, how the Insurance Company could raise a contention that the first respondent was not having a valid Driving License or Badge at the relevant time, is a matter of concern. The Insurance Company now concedes that they have verified the position and have come to understand that Annexure 1 Driving License was valid on the relevant date. The very same exercise could have been and should have been done by the Insurance Company, then and there, more so, when the particulars were clearly given in the cause title of the claim petition itself. To say the least, absolutely no effort was taken from the part of the Insurance Company to ascertain the facts and particulars in this regard and they simply chose to beat about the bush by raising wild allegations against the owner and driver of the vehicle, which cannot but be deprecated in the strongest possible terms. This Court is of the view that it is a fit case where cost is to be ordered against the Insurance Company for their lapses.

6. It however remains a fact that the appellants herein, who were the respondents 1 and 2 before the Tribunal, did not choose to contest the matter and were set exparte. Despite filing I.A.No. 3308 of 2015 seeking for production of Driving License and inspite of service of notice, they still did not find it necessary to have the license produced. It was only in the said circumstance, that adverse inference was drawn by the Tribunal, for which the Tribunal cannot be blamed in any manner. That apart, copy of the

Driving License has been produced only now, in the appeal filed with a petition to condone the delay of 450 days (which has been condoned separately). In the said circumstances, we find that the appellants are not liable to be compensated by way of cost and we spare the Insurance Company from paying any cost in this regard.

7. The appeal stands allowed and the verdict passed by the Tribunal granting liberty to the Insurance Company to recover the due amount from the appellants stands set aside. It is declared that there is no violation of any statutory/policy condition in any manner. The statutory deposit effected by the appellants, so as to maintain this appeal, will stand returned refunded to the appellant on production of a copy of the judgment.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Sd/-
K.HARILAL
JUDGE

//TRUE COPY//

PA TO JUDGE

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