IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

MACA.No.1815 of 2014 ()

AGAINST THE AWARD IN OPMV 6/2010 of M.A.C.T., OTTAPPALAM
DATED 22-07-2013

APPELLANT(S)/1ST RESPONDENT :

HARIDASAN, AGED 40 YEARS,
S/O. ACHUTHAN, 10/532, CHIRATTAKAVIL HOUSE
THRIKKALLOOR P.O., KANJIRAPUZHA, MANNARKKAD
PALAKKAD-678 581.

BY ADV. SRI.V.A.AJAI KUMAR

RESPONDENT(S)/PETITIONER AND RESPONDENTS 2 TO 7 :
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1. SAFATH SHAFI, AGED 26 YEARS
W/O. SHAFI, COMPUTER OPERATOR, VAYALIPADATH HOUSE
SISUVIHAR ROAD, P.O.PALAPPURAM, OTTAPALAM-679 103.

2. ASHKAR ALI , AGED 40 YEARS
S/O. KHADER, ANJIRA KADAVU VEETTIL
LAKSHAM VEEDU COLONY, AKALOOR, LAKKIDI
PEROOR, PALAKKAD DISTRICT-679 301.

3. THE UNITED INDIA INSURANCE CO. LTD.
BRANCH OFFICE, FAIZAL BUILDING, MAIN ROAD
OTTAPALAM, PIN-679 101.

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4. KERALADASAN UNNI
S/O. NARAYANAN IYER, AGE NOT KNOWN, 4/206
SARADA NIVAS, PARALI P.O., PALAKKAD-678 612.

5. BINOY K., AGED 32 YEARS
S/O. KERALADASAN UNNI, 4/206, SARADA NIVAS
PARALI P.O., PALAKKAD-678 612.

6. NATIONAL INSURANCE CO. LTD.
BRANCH OFFICE, EAST FORT COMPLEX, FORT MAIDAN
PALAKKAD-678 001.

7. USSANAR
S/O. UMMER, AGE NOT KNOWN, VATTUNGAL HOUSE
AKALUR P.O., PALAKKAD-679 302.

R1 BY ADV. SRI.T.C.SURESH MENON
R3 BY ADV. SMT.DEEPA GEORGE
R6 BY ADV. SRI.LAL GEORGE
R7 BY ADV. SRI.P.M.PAREETH
ADV. SRI.C.P.MOHAMMED SHAMEEL
R2,4, & 5 BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05-06-2015, ALONG WITH MACA. 1818/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.
= = = = = = = = = = = = = = =
M.A.C.A.Nos.1815 and 1818 of 2014
= = = = = = = = = = = = = = = = =
Dated this the 5th day of June, 2015

JUDGMENT

Ravindran, J.

These appeals arise from the common award passed by the Motor Accidents Claims Tribunal, Ottappalam in O.P.(MV).Nos.6 of 2010 and 75 of 2010. M.A.C.A No.1818 of 2014 arises from O.P.(MV).No.6 of 2010 and M.A.C.A.No.1815 of 2014 arises from O.P(MV).No.75 of 2010. The appellant is the common first respondent in the said claim petitions. The first respondent in M.A.C.A.No.1815 of 2014 is the claimant in O.P.(MV).No.6 of 2010 and the first respondent in M.A.C.A. No.1818 of 2014 is the claimant in O.P(MV).No.75 of 2010. Both the claimants were passengers in an auto rickshaw bearing registration No.KL-9/G-9759. The said auto rickshaw was driven by the second respondent before the Tribunal who incidentally is the second respondent in these appeals. At about 4.45 pm on 04.07.2009 the auto rickshaw in which the claimants were travelling collided with the motor car bearing registration No.KL-9/V 6080 driven by the fifth respondent and coming from the opposite direction. Both the claimants sustained injuries. They were initially taken to Valluvanad Hospital, Ottappalam and from there to Aswini Hospital, Thrissur where they underwent treatment. The claimant in O.P

(MV).No.6 of 2010, prayed for award of the sum of Rs.2,12,000/- as compensation, while the claimant in O.P(MV).No.75 of 2010 sought payment of the sum of Rs.2,44,000/-.

2. Before the Motor Accidents Claims Tribunal none of the party respondents entered appearance, with the result they were set ex parte. The third respondent, the insurer of the auto rickshaw alone entered appearance and filed a written statement. Though the third respondent insurer admitted the fact that the auto rickshaw was covered by a valid policy of insurance, the insurer contended that it had no certificate of fitness at the time of the accident and therefore it is not liable to compensate the petitioners. While the claim petition was pending, the third respondent insurer filed I.A.No.2010 of 2010 in one of the claim petitions calling for an order directing the owner of the auto rickshaw namely the appellant herein to produce the fitness certificate. Notice was ordered and served on the appellant herein. He thereupon appeared and filed an affidavit to the effect that he had transferred the auto rickshaw to one Ussanar as early as in the year 2008. In the light of the averments in the said affidavit, the claim petitioners impleaded the transferee of the auto rikshaw as supplemental seventh respondent in both the cases. He however remained absent and was set ex-parte. The

insurer thereafter filed I.A.No.1659 of 2012 for an order directing the additional seventh respondent to produce the fitness certificate. Though notice on the said application was also served on him, he remained absent and did not produce the fitness certificate. The Motor Accidents Claims Tribunal thereupon closed I.A.No.1659 of 2012 with the observation that an adverse inference will be drawn as against the seventh respondent. The Motor Accidents Claims Tribunal thereafter considered the rival contentions and held that the accident took place on account of the rash and negligent driving of the auto rikshaw by its driver, the second respondent. The Tribunal drew an adverse inference against the owner and driver of the auto rickshaw for the reason that fitness certificate was not produced, notwithstanding the orders passed by Tribunal and held that as the auto rikshaw had no fitness certificate at the time of the accident, the insurer will be entitled to recover the amount paid by it under the award from the appellant herein, the driver the second respondent and the transferee, the seventh respondent. In arriving at the said finding, the Motor Accidents Claims Tribunal also took note of the fact that Ext.B1 certificate of insurance issued by the third respondent insurer on 30.04.2009 is in the name of the appellant, that it was in force till 29.04.2010 and therefore, the case set out by him in the affidavit filed pursuant to the order passed on I.A.No.2010 of 2010 to the effect that he had transferred the vehicle to the seventh respondent in the year 2008 cannot be believed. The common appellant has filed these appeals aggrieved by the said finding.

3. We heard Sri.V.A.Ajaikumar, learned counsel appearing for the appellant, Sri.A.R.Nimod, learned counsel appearing for the first respondent and Smt.Deepa George, learned counsel appearing for the third respondent in both these cases. Respondents 4, 5 and 6 have been held to be not liable by the Tribunal. Though the second respondent who was driving the auto rickshaw has not been served, for the reason that in the event of the appeal being allowed he will also be benefited, we are of the opinion that it is not necessary to issue notice to or hear him before disposing of these appeals. The impugned award discloses that it was solely for the reason that the appellants and the seventh respondent had not produced the fitness certificate in respect of the auto rickshaw that the Tribunal has drawn an adverse inference and held that the auto rickshaw was not covered by a valid fitness certificate on the date of the accident. It is for this reason that the Motor Accidents Claims Tribunal has held that the insurer is entitled to realise the amount paid by it under the award from the appellant, the second

respondent and the seventh respondent herein who were respondents 1, 2 and 7 respectively before the Tribunal.

4. The main contention raised in the instant appeal is that for non-production of the fitness certificate or for the reason that on the date of the accident, the vehicle was not covered by a fitness certificate, the insurer cannot rely on section 149(2)(a)(i)(c) of the Motor Vehicles Act, 1988 and claim exoneration from the liability or claim the right to recover the amount paid by it from the insured. The issue raised by the appellant is in our opinion is covered in his favour by a recent decision of the Full Bench of this court in **Augustine v. Ayyappankutty** (2015 (2)KLT 139). In that case also, the main ground raised by the insurer and upheld by the Tribunal was that the validity of the certificate of fitness in respect of the motor vehicles involved in the accident stood expired on the date of the accident. Allowing the appeals filed by the registered owners of the motor vehicles involved in the accident, the Full Bench of this court held that though the vehicles were not covered by a valid certificate of fitness on the date of the accident, as the vehicles were not used for a purpose not allowed by the permit and as there is no evidence to show that the breach alleged is a fundemental breach which contributed to the cause of the accidents, the appellants are

entitled to succeed. The Full Bench held that an insurer cannot claim exoneration from its liability to indemnify the owner of a motor vehicle in respect of injuries to third parties if the motor vehicle gets involved in the accident after the expiry of the period of validity of the fitness certificate or permit, merely on account of such technical violations.

5. In the instant case, apart from merely contending that the auto rickshaw was not covered by a valid fitness certificate on the relevant date namely the date of the accident, the insurer had not pleaded or proved that the breach was so fundamental as to lead to the accident. Such being the situation, we are of the opinion that the impugned award to the extent it allows the third respondent insurer to recover the compensation paid by it under the award from the appellant, the second respondent and the seventh respondent herein cannot be sustained. In the view that we have taken, the award passed by the Tribunal will have to be suitably modified and the third respondent insurer directed to pay the compensation awarded by the Tribunal. We accordingly allow these appeals and in supersession of the award passed by the Motor Accidents Claims Tribunal pass an award directing the third respondent insurer to deposit the sum of Rs.80,300/- awarded as compensation in O.P.(MV). No.6 of 2010 and the sum of Rs.75,250/- awarded as compensation in

O.P.(MV).No.75 of 2010, together with interest 9% per annum from the date of petition till the date of deposit within two months from today.

6. The appellants have filed these appeals after depositing the sum of Rs.25,000/- each in the Motor Accidents Claims Tribunal, Ottappalam, The receipts evidencing the deposits are also produced alongwith the appeal. In view of the fact that the appellants are not liable to reimburse the insurer, we are opinion that the amount deposited by them will have to be refunded to them. We accordingly direct the Motor Accidents Claims Tribunal, Ottappalam to refund to the appellants concerned, the sum of Rs.25,000/- deposited on 11.07.2014 as per receipt No.56/14-15 and the sum of Rs.25,000/- deposited on 11.07.2014 as per receipt No.56/14-15. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj