

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937**

**MACA.No. 1608 of 2010 ( )**

**OPMV.533/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA.**

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**APPELLANT/PETITIONER:**

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**V. GOPINATH, S/O.VELUTHAKUNJU,  
LEJU NIVAS, SANATHANAM WARD,  
THONDANKULANGARA, ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.M.V.THAMBAN,  
SRI.R.REJI,  
SMT.THARA THAMBAN,  
SRI.B.BIPIN,  
SMT.REVATHY P.NAIR.**

**RESPONDENTS/RESPONDENTS:**

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**\*1. LALUMON, ATTUKAL PURAYIDOM,  
PALLITHOTTAM P.O. KOLLAM. (DELETED)**

**2. AMAR KAMASH, HYDROSE BLDG,  
PALLITHOTTAM P.O., KOLLAM.**

**3. THE ORIENTAL INSURANCE CO. LTD.,  
REPRESENTED BY ITS DIVISIONAL MANAGER,  
DIVISIONAL OFFICE, THIRUVALLA.**

**\* RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY  
AT THE RISK OF THE APPELLANT AS PER ORDER  
DATED 09/03/2015 IN I.A. NO.962/2015 IN MACA. NO.1608/2010.**

**R3 BY SRI.GEORGE CHERIAN, SENIOR ADVOCATE.  
ADVS. SMT.K.S.SANTHI,  
SMT.LATHA SUSAN CHERIAN.**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 07-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**rs.**

**P.B.SURESH KUMAR, J.**

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**M.A.C.A.No.1608 of 2010**  
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**Dated this the 7<sup>th</sup> day of July, 2015**

**JUDGMENT**

The claimant in a proceedings 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 the car in which the claimant was travelling bearing Reg.No.KL-4-A 3458 with the car bearing Reg.No.KBF/2918. The first respondent is the owner of the car bearing Reg.No.KBF/2918 and the second respondent was its driver. The third respondent is the insurer of the car owned by the first respondent. The third respondent contested the claim petition, mainly on the ground that the accident occurred on account of the negligence of the drivers of both vehicles and therefore, they are liable only for half of the

compensation payable to the claimant. The Tribunal accepted the said contention of the third respondent and passed an award permitting the appellant to recover half of the compensation determined as due viz., Rs.20,971/- from the third respondent. 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 third respondent.

4. It is beyond dispute that the accident occurred on account of the collision of the two vehicles referred to above. It is revealed from the final report submitted by the police in the crime registered in connection with the accident that the accident occurred on account of the negligence of the drivers of both the vehicles involved in the accident. As such, both of them are joint tort feasons as far as the claimant is concerned. It is now settled that in the case of composite negligence, the claimant is entitled to recover the compensation from any one of the joint tort

feasors. The said proposition of law has been reiterated by the Apex Court in **Khenyei vs. New India Assurance Co. Ltd. and others** [2015 (2) KLJ 593]. In the light of the said decision of the Apex Court, the impugned award is liable to be interfered with.

In the result, the appeal is allowed and the direction in the impugned award limiting the compensation payable to the appellant at 50% of the amount determined as due is vacated. The claimant is permitted to recover the whole amount of compensation determined as due, viz., Rs.41,942/- from the third respondent.

**P.B.SURESH KUMAR, JUDGE.**

smm