IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

MACA.No. 2413 of 2014 ()

AGAINST THE AWARD IN OPMV 653/2008 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, NORTH PARAVUR DATED 23-06-2014

APPELLANT/3RD RESPONDENT:

UNITED INDIA INSURANCE CO.LTD.
HOSPITAL ROAD, ERNAKULAM.

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENTS/PETITIONER AND RESPONDENTS 1, 2 &4:
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1. **PRASAD, AGED 42 YEARS**
   S/O.PANKAJAKSHAN, PULIMOOTIL HOUSE, LIBRARY ROAD
   N.PARUR-683 503.

2. **SATHYAN**
   S/O.SANKARAN, KAKKATTUPARAMBIL HOUSE
   THATTUKADAVU BRIDGE, CHERIYAPALLANTHURUTH KARA
   N.PARAVUR-683 503, ERNAKULAM.

3. **ANIL**
   S/O.HARI, THURUTHIL HOUSE, PARAYAKAD
   N.PARAVUR-683 503, ERNAKULAM.

4. **MURALEEDHARAN**
   KUNDULLIPADAM VEEDU, CHITTATTUKARA
   VADAKKEKARA VILLAGE-683 503.

R2 & R4 BY ADV. SRI.N.P.PRAJEESH
R3 BY ADVS. SRI.GOPAKUMAR G. (ALUVA)
SMT.ANUPAMA JOHNY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VPV

P.B.SURESH KUMAR, J.

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M.A.C.A.No.2413 of 2014

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Dated this the 9th day of January, 2015

JUDGMENT

The insurer in a proceeding for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the direction issued against them by the Tribunal in the award passed in the proceedings to indemnify the owner of the vehicle involved in the accident.

2. The claimant sustained injuries in an accident took place on 6.6.2008, involving a goods autorickshaw driven by the second respondent. The appellant was the insurer of the said vehicle. The contention of the appellant before the Tribunal was that the second respondent, the driver of the goods autorickshaw did not possess the authorisation for driving a goods autorikshaw and therefore, the insurer is not liable to indemnify the owner of the vehicle.

3. The Tribunal found that the accident occurred on account of the negligence of the second respondent and that the claimant is entitled to a sum of Rs.53,700/- by way of compensation. On the issue as to the liability of the insurer, the Tribunal found that the second respondent was holding a valid driving licence at the time of

accident. Even though there was no material before the Tribunal to show that the second respondent was authorised to drive the goods autorickshaw as on the date of the accident, the Tribunal, relying on the decision of the Apex Court in **National Insurance Co. Ltd. v. Swaran Singh** [2004 (1) KLT 781 (SC)] and the decision of this Court in **Kuruvila v. Jijo Joseph** [2013 (4) KLT 700], held that the same by itself will not absolve the insurer from its liability to indemnify the owner of the vehicle, in the absence of any material to show that the said breach of terms and conditions of the policy issued to the owner by the insurer was so fundamental as to have contributed the cause of the accident. The Tribunal also found that there is no material before it to hold that the reason for the accident was the absence of the authorisation for the second respondent to drive the goods vehicle. In the circumstances, the Tribunal found that the insurer is liable to indemnify the owner of the vehicle.

4. Heard the learned counsel for the appellant/insurer and the learned counsel for the first respondent/claimant.

5. As found by the Tribunal, it is clear that the second respondent who was driving the offending vehicle at the time of the accident was holding a valid driving licence. True, he did not have the authorisation to drive a goods vehicle as provided for under Rule 6 of the Kerala Motor Vehicles Rules at the time of the accident. In **National Insurance Co. Ltd. v. Swaran Singh** (supra), the Apex

Court held as follows:-

> *"In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for 'motor cycle without gear', for which he has no licence. Cases may also arise where holder of driving licence for 'light motor vehicle' is found to be driving a 'maxicab', 'motor-cab' or 'omnibus' for which he has no licence. In each case on evidence led before the Claims Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."*

The said decision of the Apex Court was followed in **Kuruvila v. Jijo Joseph** (supra). Paragraph 33 of the judgment reads thus:-

> *"33. Reading Ss.3, 9, 14 and 149(2)(a)(ii) of the Act in the light of the decision in National Insurance Co. Ltd. v. Swaran Singh (supra), it is clear that a distinction has been drawn for the purpose of avoidance of liability to the third parties and indemnification of the insured between "effective license" occurring in S.3 and "is not duly licensed" occurring in S.149(2)(a)(ii) and it was held that it is not sufficient that the insurer proves that the driver of the offending vehicle had no "effective license" on the date of the accident but it has to be proved that he was either not duly licensed or was disqualified from holding a license or, other circumstances stated in S.149(2)(a)(ii) of the Act existed and further, that the mere fact of there being no effective license, in the sense that the driver was not authorised to drive a transport/goods vehicle on the date of the accident by itself, is not sufficient unless the insurer is also able to prove that the breach of the condition of driving license is/are so fundamental as is/are*

> *found to have contributed to the cause of accident. That is what the Division Benches of this Court have pointed out in P.T.Moidu v. The Oriental Insurance Company Ltd. & Ors., New India Assurance Co. Ltd. v. Balakrishnan and in M.A.C.A.No.105 of 2012. In other words, that there was no authorisation/badge to drive a transport/goods vehicle on the date of the accident may amount to an infraction of S.3 of the Act opening the person concerned to prosecution under the relevant provisions of the Act but, in the absence of proof that absence of authorisation/badge has contributed to the cause of accident, the insurer is not absolved of its liability to the third parties or, its duty to indemnify the insured. The decisions of the Supreme Court referred above and which held that in the absence of "effective license" (as against the phraseology used in S.149(2)(a)(ii) of the Act) the insurer could avoid its liability are rendered by Benches of two Judges while National Insurance Co. Ltd. v. Swaran Singh (supra), is rendered by a Bench of three Judges and hence the latter decision has to be followed."*

As held by the Tribunal, there is nothing on record to indicate that the absence of authorisation for the second respondent to drive goods vehicle at the time of accident has contributed the accident. The insurer has not adduced any evidence at all in this connection. In such circumstances, in the light of the decisions aforesaid, there is no merit in the appeal and the same is accordingly dismissed.

Sd/-

P.B.SURESH KUMAR,

JUDGE

/true copy/

P.A. to Judge

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