

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

MACA.No. 1211 of 2008 ()

OPMV 382/2003 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA

APPELLANT/3RD RESPONDENT. :

**THE ORIENTAL INSURANCE CO. LTD.,
KODUNGALLUR, REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.**

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS/RESPONDENTS 1, 2 & 4. :

- 1. P.M.RAJAN, S/O. MANOHARAN,
PAZHUKUNNATH HOUSE, P.O.KODUNGALLUR.**
- 2. LOHIDAKSHAN, S/O. GANGADHARAN,
POOTHOTT HOUSE, P.O.KODUNGALLUR, UNDEKADAVU.**
- 3. R.R.KUTTAN, S/O. RAGHAVAN,
RAMANKULATH HOUSE, P.O.EDAVILANGU, KODUNGALLUR.**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

M.A.C.A.No.1211 of 2008

Dated this the 2nd day of July, 2015

JUDGMENT

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

2. The claim petition was filed by one Prasad, alleging that he sustained injuries in the accident took place on 21.2.2003, involving an autorikshaw owned by the first respondent and driven by the second respondent. The appellant contested the claim petition, contending among others, that the second respondent was not holding a driving licence to drive the vehicle at the time of the accident and also that the vehicle was not having a fitness certificate at the time of accident. The Tribunal has not accepted the contentions raised by the appellant. The appellant is, therefore, aggrieved by the decision of the

Tribunal and hence this appeal.

3. Heard the learned counsel for the appellant.

4. It is seen that the appellant has not adduced any evidence to establish their case that the second respondent was not holding a valid driving licence at the time of the accident. True, the appellant filed an application as I.A No.3331 of 2006, seeking directions to the Tribunal to direct the second respondent to produce his driving licence. The second respondent remained ex parte in the proceedings before the Tribunal. This Court in **Santhosh M.V vs. Dinu P.C and others** [2014 11 KHC 342] held that mere filing an application seeking directions to the owner and driver of the vehicle to produce the driving licence of the driver will not absolve the appellant from their obligation to prove the fact that the driver of the vehicle was not holding a licence to drive the vehicle. In the light of the said decision of this Court, the Tribunal cannot be faulted for having held that the appellant has not established that the second respondent was not holding a licence to drive the vehicle at

the time of the accident.

5. The other contention raised by the appellant that the vehicle was not having a fitness certificate at the time of accident is also not sustainable. A Full Bench of this Court in **Augustine V.M. v. Ayyappankutty** (2015 (2) KLT 139) held that absence of fitness certificate for the vehicle involved in the accident will not absolve the insurer from their liability to indemnify the owner of the vehicle.

There is therefore, no merit in the appeal and the same is accordingly dismissed.

P.B.SURESH KUMAR, JUDGE.

smm