

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

MACA.No. 2951 of 2014 ()

**(AGAINST THE AWARD IN OP(MV).NO. 578/2009 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL, MUVATTUPUZHA DATED 14-08-2013)**

APPELLANT/1ST RESPONDENT:

**TOMY GEORGE, AGED 56 YEARS,S/O.GEORGE,
KULATHUNKAL HOUSE, ELANJI (P.O),
ERNAKULAM DISTRICT, PIN -686 661**

**BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI. M.P PRASANTH**

RESPONDENTS/PETITIONER & 2ND RESPONDENT:

- 1. GIGI RAVI, AGED 41 YEARS, W/O.RAVI,
KANJIRAKUZHAYIL HOUSE, BAPUJI JUNCTION,
KOOTHATTUKULAM, ERNAKULAM DISTRICT- 686 662**
- 2. THE UNITED INDIA INSURANCE COMPANY LIMITED,
MUNICIPAL SHOPPING COMPLEX, KACHERITHAZHAM,
MUVATTUPUZHA, PIN- 686 661**

**R2 BY ADV. SRI.JOHN JOSEPH VETTIKAD
SRI.C.JOSEPH JOHNY**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 09-02-2015,ALONG WITH M.A.C.A.NO.2952 OF 2014,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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M.A.C.A.NO.2951/2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEX 1 COPY OF THE DRIVING LICENSE.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO.JUDGE

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P.B. SURESH KUMAR, J.

M.A.C.A. Nos.2951 & 2952 of 2014

Dated this the 9th day of February 2015

J U D G M E N T

These appeals are preferred by the owner-cum-driver of a vehicle involved in an accident which was the subject matter of two petitions for compensation before the Motor Accidents Claims Tribunal. The appellant is aggrieved by the common award passed by the Tribunal in the said petitions permitting the insurer of the vehicle to recover from him the compensation directed to be paid to the claimants.

2. The petitions for compensation were filed alleging that the claimants sustained injuries in the accident took place on 20.2.2009 involving a vehicle owned and driven by the appellant. The second respondent in the appeals is the insurer of the vehicle. The appellant and the second respondent were the respondents in the petitions before the Tribunal. The appellant remained ex-parte. The second respondent, while admitting the insurance policy, contended that the

appellant was not holding a licence to drive the vehicle and therefore they are not liable to indemnify him. The Tribunal as per the common award impugned in these appeals accepted the said contention of the second respondent and permitted them to recover the compensation directed to be paid to the claimants from the appellant. These appeals are preferred challenging the permission granted to the second respondent to recover the compensation granted to the claimants from the appellant.

3. Heard the learned counsel for the appellant and also the learned counsel for the second respondent.

4. The learned counsel for the appellant contended that the appellant was holding a valid driving licence at the time of accident and that the second respondent did not establish before the Tribunal that the appellant was not holding a driving licence at the time to accident. According to him, the Tribunal exonerated the second respondent from the liability to indemnify him merely on account of his non appearance in the proceedings. A copy of the driving licence of the appellant was also

produced along with the appeals.

5. The impugned common award indicates that the second respondent has not adduced any evidence to show that the appellant was not holding a driving licence at the time of accident. The second respondent is seen granted permission to recover the compensation on the basis that the appellant was charge sheeted under Section 3(1) of the Motor Vehicles Act for driving the vehicle without a licence. The copy of the driving licence produced along with the appeals indicates prima facie that the appellant was holding a driving licence at the time of accident. In the said circumstance, I am of the view that the interests of justice demand that the appellant shall be given an opportunity to establish before the Tribunal that he was holding a driving licence at the time of the accident.

6. In the result, the impugned common award to the extent it permits the second respondent to recover compensation from the appellant is set aside and the Tribunal is directed to consider the issue as to the right of the second respondent to recover the compensation

directed to be given to the claimants from the appellant afresh. The parties are directed to appear before the Tribunal on 10th March, 2015. In so far as the impugned common award is confirmed in all other respects, the claimants need not appear before the Tribunal in the further proceedings initiated pursuant to this judgment.

The appeals are disposed of as above.

Sd/-
P.B. SURESH KUMAR
JUDGE

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/ True Copy /

P.A. To Judge