IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.NO. 2955 OF 2014 ()

AGAINST THE AWARD IN OP(MV)NO.661/2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KASARAGOD DATED 13-07-2012

APPELLANT(S)[SECOND RESPONDENT]:

PRASADKUMAR.K., AGED 28 YEARS
SON OF GIRIJA, KAMBIKANAM HOUSE, POTHAMKANDAM
PERINGOME (P.O.), PAYYANNUR (VIA), KANNUR DISTRICT.

BY ADV. SRI.R.RAJESH KORMATH

RESPONDENT(S)[PETITIONER AND RESPONDENTS 1 AND 3]:

1. SEBASTIAN.V.P.
   S/O.PHILIPOSE, VAZHAPPILLIL HOUSE
   KOLLARA-CHEUPUZHA, VAYAKKARA VILLAGE
   CHERUPUZHA (P.O.), TALIPARAMBA TALUK,
   KANNUR DISTRICT,PIN. 670 511

2. SHIJU P.V.
   SON OF SUSHEELA, PUTHIYAVEETTIL HOUSE
   VELICHAMTHODU, PETTIKUNDU (P.O.), TALIPARAMBA TALUK
   KANNUR DISTRICT, PIN.671313

3. THE BRANCH MANAGER
   NEW INDIA ASSURANCE COMPANY LIMITED
   SOUTH BAZAR, PAYYANNUR,
   KANNUR DISTRICT, PIN.670307.

R3 BY ADVS. SRI.K.C.SANTHOSHKUMAR
SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

NS

P.B. SURESH KUMAR, J.

M.A.C.A. No.2955 of 2014

Dated this the 6th day of February, 2015

J U D G M E N T

The owner of a vehicle in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal in permitting the insurer of the vehicle to recover the compensation from him.

2. The first respondent sustained injuries in a motor accident took place on 08.03.2009, involving a vehicle owned by the appellant. The second respondent was the driver of the vehicle at the time of the accident and the third respondent was its insurer. The first respondent filed a petition before the Motor Accidents Claims Tribunal claiming compensation. The appellant did not contest the petition. The third respondent contested the petition contending that the second respondent was not holding a valid driving licence as also the badge required to drive the autorikshaw involved in the accident. According to them, they are, therefore, not liable to indemnify the appellant.

3. The Tribunal found that the accident occurred on account of the negligence of the second respondent and granted a sum of Rs.41,500/- by way of compensation to the first respondent and directed the third respondent to satisfy the award. On the issue relating to the liability of the third respondent to indemnify the appellant, the Tribunal found that the second respondent was not holding a badge to drive the vehicle involved in the accident and consequently permitted the third respondent to recover the compensation from the appellant, holding that the second respondent was required to hold a badge to drive the vehicle as per the terms of the policy and that his conduct in driving the vehicle without a badge would amount to breach of the terms of the policy.

4. Heard the learned counsel for the appellant and the learned counsel for the third respondent.

5. In **National Insurance Co. Ltd. v. Jisha** [2015 (1) KLT 1], a Full Bench of this Court held that the insurer of a vehicle is not entitled to be absolved from the liability to indemnify the owner for the reason that the

person who was driving the vehicle at the time of accident was not holding a badge. In the light of the said decision of this Court, this appeal is allowed and the impugned decision of the Tribunal to the extent it permits the third respondent to recover the compensation from the appellant is set aside.

Sd/-
P.B.SURESH KUMAR, JUDGE.

/ True Copy /

NS P.A. To Judge