

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

MACA.No.2422 of 2010

(AGAINST THE AWARD DATED 29-07-2009 IN OP(MV) NO.512/2006 of THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,OTTAPPALAM).

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APPELLANT/IST RESPONDENT:

**M.JABBAR,S/O.MUHAMMED,KADUNGALLUR HOUSE,
NEAR THOLANUR HIGH SCHOOL,PALAKKAD DISTRICT.**

BY ADV.SRI.P.BABU KUMAR

RESPONDENT'S/PETITIONER/RESPONDENT'S:

- 1. JOHN KURIAN,S/O.KORA KURIAN,
CHIRAYIL HOUSE,MOONNEKRA POST,
KARIMBA,MANNARKAD.**
- 2. M/S.ORIENTAL INSURANCE CO.LTD.,PALAKKAD.**
- *3. C.P.THOMAS,S/O.PARAMESWARAN,
CHIRAYIL HOUSE,MOONNEKRA POST,
KALLADIKODE.(DELETED)**
- 4. M/S.UNITED INDIA INSURANCE CO.LTD.,
BRANCH OFFICE,HOSPITAL JUNCTION,
P.O.MANNARKAD-678 582.**

***RESPONDENT NO.3 IS DELETED FROM THE ARRAY OF PARTIES
AS PER ORDER DATED 17.6.2015 IN MACA.2422/2010.**

**R2 BY ADV.SRI.V.P.K.PANICKER
R4 BY ADV.SRI.P.M.M.NAJEEB KHAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

MACA.No.2422 of 2010

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A:TRUE PHOTO COPY OF THE CERTIFICATE ISSUED BY THE SUB
R.T.O,DATED 3.11.2010.**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

P.B.SURESH KUMAR, J.

M.A.C.A.No.2422 of 2010

Dated this the 17th day of June, 2015

JUDGMENT

This is an appeal filed by the owner of a vehicle involved in an accident which was the subject matter of a claim petition before the Motor Accidents Claims Tribunal, challenging the decision of the Tribunal.

2. The first respondent filed the claim petition alleging that he sustained injuries in an accident took place on 28.2.2005, involving a vehicle owned by the appellant. The second respondent was the insurer of the vehicle. The second respondent, among others, contended that the vehicle owned by the appellant was not having a valid fitness certificate at the time of the accident and therefore they are entitled to recover from the appellant the compensation, if any, found payable to the claimant. The Tribunal accepted the contention of the second respondent and while granting compensation to the claimant, the Tribunal permitted the second respondent to recover the same

from the appellant. The appellant is aggrieved by the said decision of the Tribunal and hence this appeal.

3. In **Augustine vs. Ayyappankutty** [2015 (2) KLT 139], a Full Bench of this Court held that the insurer of the vehicle is not entitled to be exonerated from the liability for the reason that the vehicle involved in the accident was not having a valid fitness certificate at the time of the accident. In the light of the said decision of this Court, the direction given by the Tribunal permitting the insurer to recover the compensation from the appellant is unsustainable.

In the result, the appeal is allowed and the direction in the impugned award permitting the second respondent to recover the compensation found payable to the claimant from the appellant is vacated.

P.B.SURESH KUMAR, JUDGE.

smm