IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

MACA.No. 1584 of 2008 ( )

AGAINST THE AWARD IN OPMV.NO.1204/2000 of M.A.C.T., KOZHIKODE, DATED 02-01-2008.

APPELLANT/PETITIONER:-

NISHAD.K.,
S/O.MOIDEEN KUTTY, KAROTH HOUSE,
VYDYARANGADI P.O.,
(VIA) RAMANATTUKARA, KOZHIKODE.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SMT.PREETHY KARUNAKARAN
SMT.M.M.DEEPA
SMT.M.R.MINI
SRI.K.RAVI (PARIYARATH)
SRI.JAYKAR.K.S.

RESPONDENTS/RESPONDENTS:-

1. K.MUHAMMED KUTTY,
S/O.KUNHIMOIDEEN, KADAVATH HOUSE,
PULIKKAL P.O.,
MALAPPURAM.

2. THE KERALA STATE INSURANCE DEPARTMENT
REPRESENTED BY THE GOVERNMENT PLEADER,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY ADV.GOVT.PLEADER SRI.EGGY N.ELIAS.

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

Kvs/-

P.B.SURESH KUMAR, J.

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M.A.C.A.No.1584 of 2008

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Dated this the 7th day of July, 2015.

J U D G M E N T

The claimant in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal in exonerating the insurer of the vehicle involved in the accident from the liability to compensate him.

2. The claimant sustained injuries in the accident took place on 16.1.2000 involving a vehicle owned and driven by the first respondent. The second respondent was the insurer of the vehicle. The first respondent filed a written statement in the proceedings admitting the involvement of the vehicle in the accident, but contending that the accident occurred on account of the rash and negligent riding of the motor cycle in which the appellant was travelling at the time of accident. The second

respondent did not file any written statement.

3. The Tribunal found that the first respondent has not established the fact that the vehicle was covered by a valid insurance policy and therefore he is liable to pay the compensation determined as due to the appellant. Accordingly, an award was passed directing the first respondent to pay the compensation determined as due to the appellant. The appellant is aggrieved by the said decision of the Tribunal in so far as the second respondent, the insurer of the vehicle was exonerated from the liability to pay compensation to him.

4. Heard the learned counsel for the appellant and also the learned Government Pleader for the second respondent.

5. The claim petition is filed alleging that the vehicle involved in the accident was covered by a valid insurance policy issued by the second respondent at the time of accident. The second respondent which was a party to the claim petition has not disputed the above averment in

the claim petition by filing a written statement. They have also not produced the policy of insurance issued to the first respondent. A perusal of the award of the Tribunal would indicate that it is for the reason that the first respondent has not produced the policy of insurance, the Tribunal took the view that the existence of the insurance coverage of the vehicle involved in the accident is not established by him. In this appeal, the appellant has produced a copy of the policy as an additional document. The appellant has also produced the registration particulars of the vehicle involved in the accident bearing registration No.KL-10/J 829. The learned Government Pleader, who was appearing for the second respondent/insurer has admitted that the policy of insurance produced by the appellant was one issued to the first respondent. According to him, the engine number of the vehicle shown in the policy of insurance and the registration particulars are different. The engine number shown in the policy is 697D 21GQQ 122598 and the chassis number is 373094GQQ 116822. In the light of the aforesaid discrepancy, according to the learned Government Pleader, the second respondent cannot be fastened with the liability to compensate the appellant. A perusal of the policy of insurance as also the registration particulars of the vehicle would indicate that the engine number shown in both the documents are one and the same. The name of the insured shown in the policy concerned is that of the first respondent. The second respondent has no case that the first respondent owned another vehicle with the chassis number shown in the policy of insurance and the engine number shown in the registration particulars. Even if they have such a case, there cannot be a vehicle like that as there will not be two vehicles with the same engine number. In the circumstances, it has to be taken that the policy of insurance produced by the appellant is the policy of insurance issued by the second respondent for the vehicle involved in the accident. The decision of the Tribunal in exonerating the second respondent from the liability to pay compensation to the appellant, in the circumstances, is liable to be interfered with.

In the result, this appeal is allowed. The impugned award is modified and the second respondent is directed to pay the compensation determined as due to the appellant.

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

Kvs/-

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PA TO JUDGE.