

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

MACA.No. 3283 of 2014 ()

**AGAINST THE AWARD IN OP(MV) NO. 225/2008
OF MOTOR ACCIDENTS CLAIMS TRIBUNAL -II (ADDL.DISTRICT COURT – II),
PATHANAMTHITTA**

APPELLANT/PETITIONER IN THE O.P(MV) :

**ALEYAMMA VARGHESE
W/O.PONNACHAN, PAKKAYIL VEEDU, VETTOOR P.O.
MALAYALAPUZHA, PATHANAMTHITTA.**

**BY ADVS.SRI.T.K.BIJU (MANJINIKARA)
SMT.ANNIE M. ABRAHAM**

RESPONDENTS/RESPONDENTS IN THE O.P(MV) :

- 1. BIJU VARGHESE
S/O.VARGHESE, THEKKETHANATHU HOUSE, ONAKOOR
PAMPAKUDA, MOOVATTUPUZHA (DRIVER)-686667.**
- 2. PROPRIETRIX,
M/S.RAGNA TOURS AND TRAVELS, C-1103J NEHRU STADIUM
KALOOR, KOCHI (OWNER)-682017.**
- 3. THE BRANCH MANAGER,
ORIENTAL INSURANCE CO.LTD, PALLIMUKKU
ERNAKULAM-682016.**

**R3 BY ADVS. SRI.N.S.NAJEEB
SMT.K.S.SANTHI**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

P.B.SURESH KUMAR, J.

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M.A.C.A.No.3283 of 2014.

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Dated this the 1st day of September, 2015.

J U D G M E N T

The claimant in a property damage case before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision in the claim petition.

2. The accident, which is the subject matter of the claim petition, took place on 26.10.2007. According to the claimant, damage was caused to the Omni van owned by her in the accident on account of the rash and negligent driving of the offending vehicle, viz., a tempo van by the first respondent. Respondents 2 and 3 are the owner and the insurer of the offending vehicle respectively. Though the Tribunal found that the accident occurred on account of the negligence of the first respondent, the claim petition was dismissed holding that the Omni van owned by the claimant was not covered by an insurance policy. The claimant is

aggrieved by the decision of the Tribunal.

3. Heard the learned counsel for the claimant and the learned counsel for the third respondent, the insurer of the offending vehicle.

4. As noticed above, the Tribunal found that the accident occurred on account of the negligence of the first respondent. It is beyond dispute that damage was caused in the accident to the Omni van owned by the claimant. In so far as it is found that the accident occurred on account of the negligence of the first respondent, respondents 1 to 3 are liable to compensate the claimant for the damage caused to her car. The fact that the Omni van owned by the claimant was not covered by a policy of insurance is irrelevant in the context of the right of the claimant to claim compensation for the damage caused to her vehicle on account of the rash and negligent driving of the offending vehicle by the first respondent. Since the compensation payable to the claimant has not been determined by the Tribunal, the matter has to go back to the Tribunal.

In the result, the impugned award is set aside and OP(MV).No.225 of 2008 is remitted to the Motor Accidents Claims Tribunal-II, Pathanamthitta for fresh disposal after affording the parties a further opportunity to adduce evidence.

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

Kvs/-

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PA TO JUDGE.