IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

MACA.No. 3381 of 2014 ()

AGAINST THE AWARD IN OPMV 240/2005 of M.A.C.T., NEYYATTINKARA, DATED 27-07-2013

APPELLANT/1ST RESPONDENT:-

FERDINENT AGED 59 YEARS
S/O.KELIES, VIJAYASADANAM, UCHAKKADA P.O.

BY ADVS.SRI.R.T.PRADEEP
SRI.P.BIJIMON

RESPONDENTS/APPLICANT/2ND RESPONDENT & ADDL.3RD RESPONDENT:-

1. RENJITH
S/O.MUTHUNAYAKOM, OOTHUKUZHIKKARA VEEDU
POZHIYOOR P.O., PIN - 695 513.

2. THE MANAGER
NEW INDIA INSURANCE CO.LTD., G.A.COVIL ROAD
THIRUVANANTHAPURAM, PIN - 695 001.

3. RAJENDRA BABU
S/O.RAGHAVAN, KADAYARA PUTHEN VEEDU, THAZHAVILA
KAKKAVILA, PIN - 695 506.

SRI.A.A.ZIYAD RAHMAN, SC FOR R2.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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M.A.C.A.No.3381 of 2014.
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Dated this the 5th day of February, 2015.

J U D G M E N T

The owner cum driver of the vehicle in an original 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 from him the compensation granted to the claimant.

2. The accident took place on 21.10.1991, causing injuries to the first respondent. The vehicle at the time of the accident was covered by a valid insurance policy issued by the second respondent. The first respondent, in the circumstances, claimed compensation from the appellant as also from the second respondent. The second respondent filed a written statement admitting the policy issued to the appellant, but contending that the appellant did not hold a passenger carrying permit at the time of accident and

therefore, they are not liable to indemnify him. According to the insurer, the said conduct of the appellant would amount a breach of the terms of the policy issued to him. The appellant filed a written statement in the proceedings contending that since the vehicle was covered by a valid insurance policy issued by the second respondent at the time of accident, the second respondent is liable to indemnify him. In the course of the proceedings, the second respondent filed an interlocutory application as I.A.No.4382 of 2009 seeking a direction to the appellant to produce the permit of the vehicle valid as on the date of the accident. The appellant filed objection to the said application contending that the vehicle has since been sold by him and that though he had applied for a certified copy of the permit from the concerned Joint Regional Transport Officer, he is unable to obtain the same for want of records in the office of the Joint Regional Transport Officer.

3. The Tribunal, on appraisal of the materials on record, found that the claimant is entitled to compensation to the tune of Rs.16,000/- and directed that the insurer is to pay the compensation granted to the claimant and passed

an award to that effect. As per the award, the Tribunal also permitted the insurer to recover the amount from the appellant, holding that the appellant was not holding a valid passenger carrying permit at the time of accident. It is aggrieved by the said decision of the Tribunal that the appellant has come up in this appeal.

4. Heard the learned counsel for the appellant as also the learned counsel for the second respondent.

5. The learned counsel for the second respondent, relying on the provisions in Section 149(2) of the Motor Vehicles Act, contended that insurer is entitled raise the want of permit as a valid defence in a proceedings before the Tribunal and that in so far as the appellant has not established that he was holding a valid permit as on the date of accident, the insurer is not obliged to indemnify the owner.

6. True, it is evident from Section 149(2) of the Motor Vehicles Act that the insurer in a proceedings is entitled to set up the want of permit for the vehicle involved in the accident as a valid defence, provided the same is a condition in the policy. Section 149(2) only deals with the

permissible conditions. It is for the insurer to establish in a given case that one of the conditions permitted to be imposed in Section 149(2) was imposed in the insurance policy issued to the owner and there has been a breach of that condition. In order to establish the breach of the condition imposed in the policy, it is essential for the insurer to produce the policy. It seems that the policy which was issued to the owner of the vehicle has not been produced before the Tribunal by the insurer, while taking up the contention that there has been a breach of condition of policy. The contention raised by the insurer before the Tribunal that they are entitled to be exonerated from the liability is liable to be rejected on that sole ground.

In the result, this appeal is allowed and the impugned award is set aside to the extent it gives liberty to the insurer to recover the compensation from the appellant.

Sd/-

P.B.SURESH KUMAR,
JUDGE

Kvs

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PA TO JUDGE.