

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

MACA.No. 2148 of 2008 ()

OPMV 349/2003 of MACT VADAKARA

APPELLANT(S)/3RD RESPONDENT:

UNITED INDIA INSURANCE COMPANY LTD.
REP. BY ITS ASST.MANAGER, REGIONAL OFFICE, SHARANYA
HOSPITAL ROAD, KOCHI - 11.

BY ADVS.RAJI T.BASKAR
SRI.RAJAN P.KALIYATH

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 & 2 & SUPPLE. 4TH RESPONDENT :

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1. S.V.THAHA
S/O.MOOSA, SARAMBI VALAPPIL HOUSE, MELADI AMSOM
DESOM POST, MELADI, KOYILANDI TALUK.
 2. RAJEEVAN V.M., S/O.KANARAN,
VAZHAYIL MEETHAL HOUSE, P.O.MELADI, KOYILANDI TALUK.
 3. SUDHEESH M.K., S/O.KANNAN, PULIKKU
MADATHIL HOUSE, POST MELADI, KOYILANDI
TALUK.
 4. P.T.HAMEED, S/O.ASSAINAR, PUDUKKUDY
THAZHA HOUSE, MELADI POST, PAYYOLI.

R4 BY ADV. SRI.C.R.SIVAKUMAR
R1 BY ADV. SRI.K.V.SOHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.A.C.A. No.2148 of 2008

Dated 1st July, 2015.

J U D G M E N T

The insurer in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal. The first respondent sustained injuries in the accident took place on 6.12.2002 involving a taxi jeep owned by the first respondent and driven by the second respondent. The appellant was the insurer of the said vehicle. The appellant contested the claim petition on the ground that the seating capacity of the taxi jeep was only five and that the vehicle was carrying nine passengers at the time of accident and therefore, they are not liable to indemnify the owner of the vehicle as the conduct of respondents 1 and 2 in carrying nine passengers in the vehicle would amount to breach of the terms of the policy. The Tribunal rejected the contention of the appellant and allowed the claim petition directing the appellant to pay to the claimant the compensation determined as due to him. The appellant is aggrieved by the

said decision of the Tribunal.

2. Heard the learned counsel for the appellant as also the learned counsel for the first respondent.

3. In **National Insurance Company Ltd. v. Anjana Shyam** (AIR 2007 SC 2870), the Apex Court held that even in a case where there is overloading of passengers, the insurer will be liable in respect of the number of passengers for whom insurance has been taken. There is no dispute to the fact that the passenger capacity of the vehicle involved in the accident was five and only five persons had sustained injuries in the accident. As such, in the light of the decision of the Apex Court, the appellant is liable to indemnify the owner of the vehicle. There is, therefore, no merit in the appeal and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)