IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

MACA.No. 2353 of 2008 ( )

OPMV.1193/2002 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR.

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APPELLANT/2ND RESPONDENT:

NATIONAL INSURANCE COMPANY LTD.,
REP. BY ITS MANAGER, REGIONAL OFFICE,
3RD PARTY WING, OMANA BUILDING,
PADMA JUNCTION, KOCHI-35.

BY ADV. SMT.RAJI T.BHASKAR.

RESPONDENTS/PETITIONER AND RESPONDENTS 1 AND 2 RESPECTIVELY:

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1. THAMI, AGED ABOUT 52 YEARS,
   S/O. KUNJAN, KUNNANKAD HOUSE, TRICHOOR. P.O.,
   ERUMAPETTY VIA., THRISSUR DISTRICT.

2. V.M. MUSTAFA, S/O. MOIDUNNI,
   VELUTHAVALAPPIL HOUSE, THICHOOR.P.O,
   ERUMAPETTY VIA., THRISSUR DISTRICT.

3. BADUSHA, S/O. KUNJUMUHAMMED,
   KANIPPAI VEETTIL HOUSE, ORUMANYOOR. P.O,
   CHAVAKKAD, THRISSUR DISTRICT.

R1 BY ADVS. SRI.K.B.MOHANDAS,
SRI.LELLULAL T.G.THUNDATHIL.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

P.B.SURESH KUMAR, J.

M.A.C.A.No.2353 of 2008

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Dated this the 21st day of May, 2015

<u>JUDGMENT</u>

The insurer in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. The first respondent has filed the claim petition alleging that he sustained injuries in an accident took place on 4-5-2002, involving a mini lorry owned by the second respondent and driven by the third respondent. According to the claimant, the accident took place while he was going to Kollangode in the vehicle involved in the accident to collect mangoes.

3. Respondents 2 and 3 remained ex parte. The appellant contested the claim petition, contending that the claimant is a gratuitous passenger in the vehicle not covered

by the statutory policy of insurance. The Tribunal rejected the said contention of the appellant and passed the award permitting the claimant to recover the compensation determined as due from the appellant. The appellant is aggrieved by the said decision of the Tribunal.

4. Heard the learned Counsel for the appellant.

5. The learned Counsel for the appellant, relying on the decision of the Apex Court in **National Insurance Co. Ltd vs. Kaushalaya Devi and others** (2008 ACJ 2144), contended that only owners of goods carried in the vehicle or their authorised representatives are liable to be covered under the statutory policy of insurance. According to the learned counsel, even according to the claimant, the vehicle involved in the accident was not carrying any goods at the time of accident and the claimant was only proceeding to Kollangode to collect the goods and therefore, he can be treated only as a gratuitous passenger.

6. In **National Insurance Co. Ltd vs. Kaushalaya**

Devi and others (supra), in an identical fact situation, the Apex Court held as follows :

> 13. The deceased was not the owner of any goods which were being carried in the truck. Admitted position is that he had been travelling in the truck for purpose of collecting the empty boxes. He was a vegetable dealer. He was not travelling in the truck as owner of the goods, viz., the vegetables. He was travelling in the truck for the purpose other than the one for which he was entitled to travel in a public carriage goods vehicle.
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> This aspect of the matter is squarely covered by the decision of this court in Brij Mohan's case, 2007 ACJ 1909 (SC), wherein the Bench cited with approval the decision in New India Assurance Co. Ltd. vs. Asha Rani 2003 ACJ 1 (SC), wherein it was stated.
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> " (26) In view of the changes in the relevant provisions in 1988 Act vis-a-vis 1939 Act, we are of the opinion that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used, i.e., 'a third party' . Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore."

7. As in the case dealt with by the Apex Court, in the instant case also, in so far as the vehicle was not carrying any goods at the time of accident, the claimant can be

considered only as a gratuitous passenger not covered by the statutory policy of insurance. In the said view of the matter, the impugned award is liable to be modified.

In the result, the impugned award is modified and the finding of the Tribunal that the appellant is liable to indemnify the owner of the vehicle involved in the accident is vacated. The Tribunal is directed to release the amount deposited by the appellant in terms of Section 173 of Motor Vehicles Act to the appellant.

P.B.SURESH KUMAR, JUDGE.

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