

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

OP (MAC).No. 103 of 2015 (O)

(OP(MV).NO.386/2011 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, MUVATTUPUZHA)

PETITIONER(S):

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1. **JOBY, S/O.XAVIER,
VAZHAKKUZHIYIL HOUSE, MANJOOR KARA,
MANJOOR VILLAGE, KOTTAYAM DISTRICT.**
 2. **BINCYJOBY, W/O.JOBY,
VAZHAKKUZHIYIL HOUSE, MANJOOR KARA,
MANJOOR VILLAGE, KOTTAYAM DISTRICT.**

BY ADV. SRI.JACOB E SIMON

RESPONDENT(S):

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1. **SUMESH, S/O.KUNJUNNI,
RESIDING AT PARAPARAMBIL HOUSE,
ELANJI VILLAGE, ALAPURAM KARA, PIN -686 665.**
 2. **THE NEW INDIA ASSURANCE CO. LTD.,
N.S.S.UNION BUILDING, WEST GATE, VAIKOM,
PIN- 686 141.**

R2 BY ADV. SRI.A.A.ZIYAD RAHMAN

**THIS OP (MAC) HAVING BEEN FINALLY HEARD
ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP (MAC).No. 103 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE
BEARING REG.NO.KL-5/H-1074.**

**EXHIBIT-P2: TRUE COPY OF THE AWARD DATED 27/05/2014 IN O.P.(MV) NO.386/2011
OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, MUVATTUPUZHA.**

**EXHIBIT-P3: TRUE COPY OF THE DRIVING LICENSE HAVING NUMBER 36/611/1999
ALONG WITH PARTICULARS OF DRIVING LICENSE.**

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

P.B.SURESH KUMAR, J.

O.P(M.A.C)No.103 of 2015

Dated this the 15th day of September, 2015

JUDGMENT

This original petition is filed by the driver and owner of a vehicle involved in an accident which was the subject matter of a claim petition before the Motor Accidents Claims Tribunal, challenging the decision in the claim petition.

2. O.P(M.V)No.386 of 2011 was the claim petition before the Motor Accidents Claims Tribunal. The said claim petition was disposed of along with O.P(M.V)No.288 of 2011 filed by one Rajesh, who also sustained injuries in the very same accident. As per the common award in the claim petitions, the Tribunal permitted the insurer of the vehicle to recover the compensation granted to the claimants from the

petitioners on the ground that the first petitioner was not holding a driving licence to drive the vehicle involved in the accident. The petitioners have challenged the award in O.P (M.V)No.288 of 2011 before this Court in M.A.C.A.No.1967 of 2015, contending mainly that the first petitioner was holding a valid driving licence at the time of accident. This court allowed M.A.C.A.No.1967 of 2015 as per judgment dated 1.8.2015 and remitted the claim petition to the Tribunal for fresh disposal. In this original petition also, the grievance of the petitioners is that they should not have been fastened with the liability to reimburse the compensation to the insurer. In the light of the decision of this court in M.A.C.A.No.1967 of 2015, O.P(M.V)No.386 of 2011 is also liable to be remitted to the Tribunal for fresh disposal.

In the result, the original petition (MAC) is allowed and the direction in the impugned award permitting the second

respondent to recover the compensation from the petitioners is vacated. The Tribunal shall decide the claim petition afresh, after affording the parties an opportunity to adduce further evidence in the matter. The parties shall appear before the Tribunal on 16.11.2015. The Tribunal is directed to release the deposit made by the petitioners, as provided for under Section 173 of the Motor Vehicles Act, to the petitioners. The registry is directed to return the original documents produced by the first petitioner before this Court.

P.B.SURESH KUMAR, JUDGE.

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