IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

OP (MAC).No. 146 of 2015

AGAINST THE AWARD IN OP (MV) 302/2007 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKKARA DATED 27.01.2015

PETITIONER/2ND RESPONDENT:

SUSAMMA PHILIP, R/o ELANJICKAL PUTHEN PURAYIL,
VEEYAPURAM P.O., HARIPPAD.

BY ADVS.SRI.P.HARIDAS
SRI.P.C.SHIJIN

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 3:

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1. PARAMESWARAN AGED 74 YEARS,
S/O. KOCHU KRISHNAN, KUTTEMPEROOR MURI,
MANNAR VILLAGE - 689 622.

2. KALESHKUMAR, AGED 33 YEARS, S/O. SASIDHARAN,
R/o KODUM THARA HOUSE, MEPPADAM MURI,
VEEYAPURAM VILLAGE (DRIVER). 690 514.

3. THE ORIENTAL INSURANCE CO.LTD, DIVISIONAL OFFICE,
THIRUVALLA, REP. BY ITS DIVISIONAL MANAGER. POLICY No.7579/2006 VALID FROM 14.02.2006 TO 13.02.2007 POLICY ISSUED FROM BRANCH OFFICE, CHANGANACHERRY. 686 101.

R3 BY SMT.K.S.SANTHI.

THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P (MAC) No.146/2015

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT.P1	:	COPY OF RECEIPT ISSUED BY ADVOCATE SRI. JACOB T.KOSHY.
EXT. P2	:	COPY OF AWARD IN O.P(MV) 302/2007 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKKARA DATED 27.01.2015.
EXT.P3	:	COPYOF I.A.1618/2015 IN O.P (MV) 302/2007 DATED 26.06.2015.
EXT.P4	:	COPY OF OBJECTION FILED BY PETITIONER IN I.A.1618/2015 IN O.P.(MV) 302/2007 DATED 8.07.2015.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A to Judge.

smp

P.BHAVADASAN, J.

Original Petition (MAC) No.146 OF 2015

Dated this the 23rd day of November, 2015.

J U D G M E N T

This original petition is filed seeking the following relief:

(i) Issue an appropriate order or direction directing the learned Judge Motor Accident Claims Tribunal, Mavelikkara to accept the documents submitted by the petitioner along with Exhibit-P4 objection in I.A No.1618 of 2015 in OP (MV) No.302 of 2007 and to pass orders on Exhibit-P3 treating 2nd respondent is having valid licence and authorize to drive transport vehicle during relevant time in the light of full bench decision of this honourable court National Insurance Company Ltd. v. Jisha K.P & Others, 2015 (1) KHC 29.

2. Petitioner owned a vehicle. It met with an accident injuring some person which resulted in a claim petition being filed by the injured before the Tribunal concerned. Ext.P2 is the Award passed by the Tribunal.

3. One of the contentions of the Insurance Company was

that the person who was driving the vehicle did not have valid driving licence.

4. It must be noticed here that respondents 1 and 2 i.e. owner and driver, remained ex parte and only the Insurance Company contested the matter. Relying on Ext.A8, a final report said to have been filed by the Investigating Officer, Tribunal came to the conclusion that the driver had no valid driving licence at the time of accident. The Tribunal went on to hold that the 3rd respondent-Insurance Company is bound to pay compensation but is entitled to recover the same from the owner of the vehicle. The O.P was disposed of as follows:

> "15. 3rd respondent is allowed to reimburse the award amount from the owner on initially depositing the same in the name of the petitioner. However, the right of reimbursement shall become inoperative, if in a proceeding for recovery, the 1st and 2nd respondents produced driving licence and a finding to that effect is entered into that petition subject to reasonable cost to the insurance company".

5. The petitioner points out that there was valid driving licence at the time of accident as could be seen from Ext.P4. But

there was no renewal of badge at the relevant time. The necessity to have a badge was considered by this Court in the decision in ***National Insurance Company Ltd.*** *vs.* ***Jisha K.P and others*** (2015 (1) KHC 29 (FB)) wherein it was held that possession of badge was not within Section 149 of Motor Vehicles Act and mere absence of badge by driver is not sufficient to exonerate the Insurance Company from the liability to pay compensation. The petitioner apprehends that the Tribunal may not appreciate the facts in the proper perspective and may direct certificate be issued to the Insurance Company to recover the amount from the petitioner.

There is no reason for this Court to believe that the Tribunal concerned which has been moved by the petitioner herein pointing out that there was valid licence, will not consider the dictum laid down in the decision in ***National Insurance Company Ltd.*** *vs.* ***Jisha K.P and others*** (2015 (1) KHC 29 (FB)) regarding badge. So also there is no reason to believe that the Tribunal will not consider whether any reasonable costs can be awarded in law asking the petitioner to pay the Insurance Company.

With the above observation, this original petition is disposed of.

Sd/-

P.BHAVADASAN
JUDGE

smp

// True Copy //

P.A to Judge.