(2010) 11 KL CK 0303

In the High Court Of Kerala

Case No : M.A.C.A. No. 622 of 2009

Joshy John APPELLANT

Vs

K.K. Purushothaman, Utham Kumar. K.G. and New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Citation : (2010) 11 KL CK 0303

Hon'ble Judges : M.N. Krishnan, J

Bench : Single Bench

Advocate : M.K. Dileepan, for the Appellant; P.G. Ganappan, for the Respondent

Judgement

M.N. Krishnan, J.—This appeal is preferred against the award of the Motor Accidents Claims Tribunal, Pala in O.P.(MV)26/06.The

claimant, while travelling in an auto rickshaw has sustained injuries in a road accident and he was awarded a compensation of Rs. 71,980/- and the

insurance company was directed to pay the amount and get it reimbursed from respondents 1 and 2, namely the owner and driver. It is challenging

the reimbursement from the driver, the driver has come up in appeal.

2. Heard the learned Counsel for the appellant as well as the insurance company. It is true that when an accident took place on account of the rash

and negligent driving of the driver he is primarily liable and the owner is vicariously liable for the acts of the driver and the insurance company by

virtue of the terms is bound to indemnify the owner. Now the reimbursement is the issue in this case only on account of the fact that the vehicle did

not have a valid permit and therefore there had been breach of policy condition which enable the insurance company to realise the amount from the owner. Now the position is well settled in view of the decision reported in Ashraf Vs. Fathima, . There a question arose as to the right of recovery

so far as the insurance company is concerned. This Court held that the privity of contract is in between the insured and the insurer. Normally the

policies are issued only in the name of registered owner and therefore the Court held that the insurance company can recover the amount only from

the registered owner on account of the privity of contract. Now it is the privity of contract that governs the field. When there is a breach of policy

condition namely non possession of a valid permit it is a breach committed by the owner and therefore the contract of insurance enables the insurer

to get the amount recovered from the insured for the breach of policy conditions. Since the right to recover is on account of the breach of policy

condition, then, only the insurer can be made liable. Therefore I modify the award of the Tribunal and hold that the insurance company is

competent to recover the amount only from the owner namely the 2nd respondent in the claim petition and not against R1. The position would have

been different if the claimant was to proceed, for the reason so far as the claim is concerned all are jointly and severally liable. This is the position

of law. With this modification the appeal is disposed of.

