IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

MACA.No. 575 of 2007 ( )

AGAINST THE AWARD IN OP(MV) 256/2005 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL TIRUR DATED 31-10-2006

APPELLANT/3RD RESPONDENT:
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UNITED INDIA INSURANCE COMPANY LTD.
MALAPPURAM NOW REPRESENTED BY ITS ASSISTANT MANAGER
REGIONAL OFFICE, "SHARANYA", HOSPITAL ROAD
KOCHI-11.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONER AND RESPONDENTS 1 & 2:
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1. KRISHNAN NAMBOODIRI
S/O.SREEKUMARAN NAMBOODIRI, 'MANGALYA'
MANGALASSERY MANA, OTTAPPALAM P.O., PALAKKAD DISTRICT.

2. T.M.JOHNY, S/O.T.J.MATHEW,
M.S.P.FAMILY LANE, 62, A BLOCK
PALAKKAD.

3. THE D.G.P., THIRUVANANTHAPURAM.

R1 BY ADV. SRI.M.DEVESH
R2 BY ADV. SRI.BABU S. NAIR
R3 BY ADV. GOVERNMENT PLEADER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

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M.A.C.A.No.575 of 2007

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Dated this the 21st day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

In this appeal filed by the Insurance Company the only legal point that arises for consideration is as to the liability, of the appellant company to indemnify the owner of the vehicle. It was a case where the claimant was working as a Reserve Inspector of Police in A.R. Camp at Palakkad. He was travelling in the departmental jeep bearing registration No.KL-ip-7318 which hit on the wall on the side of the road as a result of which he sustained the injuries. He was on patrol duty at that relevant time. The third respondent the Director General of Police has been impleaded as the vehicle belonged to the department. After elaborate evidence the Tribunal has granted an amount of Rs.26,000/- with interest to the claimant.

2. Before us learned Senior Counsel for the

appellant submitted that the policy Ext.B3 is an “act only policy” which is clear from the endorsement in Ext.B3 itself. Being an “act only policy” there is statutory liability alone and it will not cover the risk of a passenger in a jeep. Learned Senior Counsel relied upon the decision of the Apex Court in **United India Insurance Co.Ltd. v. Tilak Singh [2006 (2) KLT 884 (SC)]**.

3. The learned Senior Government Pleader appearing for the department submitted that this court will be justified in taking note of the fact that the injured was travelling in the vehicle in connection with his official duties and therefore it cannot be said that he was a gratuitous passenger and hence the liability will have to be fastened on the Insurance Company. We have considered the rival submissions. The policy herein is not a comprehensive policy at all and it is only an act only policy. If that be so, and going by the decision cited supra, the Insurance Company will not be liable to meet the liability. That was a case where a pillion rider was involved in the accident and

the liability of the Insurance Company, was the subject matter of consideration. In paragraph 21 it was held as follows:

> “21. In our view, although the observations made in Asha Rani case (2003(1) KLT 165 (SC) = (2003) 2 SCC 223), were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.

4. The learned Senior Counsel for the appellant submitted that there is no evidence to show that any additional premium has been paid to get additional coverage for the passenger. Insurance being a special contract there could have been payment of additional premium to cover passengers in the jeep in question which is absent in this case. There are series of decisions of the Apex Court in tune with the above legal position. All the later decisions were considered by the Apex Court in **Oriental Insurance Company Ltd. v. Surendra Nath**

Loomba [AIR 2013 SC 483] and it was held that as far as the liability of insurer, in respect of a claim by a passenger in a private car is concerned unless it is a policy of the nature comprehensive/ package policy there will not be coverage.

5. In that view of the matter we cannot accede to the argument of the learned Senior Government Pleader that this court has to take note of the nature of the duty performed by the injured. In the absence of any provision to have insurance coverage in respect of such persons we cannot import anything into the conditions of policy also. For all these reasons the contention raised by the learned Senior Counsel for the Insurance Company is justified and accordingly the appellant is entitled to succeed.

6. It is clear that the Insurance Company is not liable to satisfy the award and the third respondent will be liable to satisfy the award.

7. The company has deposited 50% of the award amount before the Tribunal under Section 173 which will be

refunded to the appellant on an application.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/