IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

MACA.No. 445 of 2013

AGAINST THE AWARD IN OPMV 2892/2004 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR

APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE CO LTD.,
KUNNAMKULAM, REPRESENTED BY ITS ASSISTANT MANAGER, REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT/CLAIMANT:
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1. MINOR VISHNU.K.J., S/O.JYOTHISH KUMAR,
KAVALLOOR HOUSE
NEAR SANKARANKULANGARA TEMPLE,
P.O. KANATTUKKARA, THRISSUR DISTRICT-680 011.
BY HIS GUARDIAN NEXT FRIEND AND MOTHER JESSY.

2. K. SANGEETHA
D/O. UNNIKRISHNAN, SOUPARANIKA, ANUGRAHA GARDENS
THRISSUR-12 PIN-680 012.

3. RAJESH,
S/O. GOPALAKRISHNAN, EACHARATH HOUSE
NEAR THECHIKOTTUKAVU TEMPLE, PERAMANGALAM, PUZHAKKAL
THRISSUR DISTRICT-680 553.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 25-05-2015, ALONG WITH MACA. 453/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AS

A.HARIPRASAD, J.

M.A.C.A.Nos.445 & 453 of 2013

Dated this the 26th day of May, 2015

C O M M O N J U D G M E N T

Oriental Insurance Company Limited, the third respondent in the proceedings before the court below, is the appellant. They issued a policy in respect of a motor car which met with an accident on 10.08.2003. It collided with another vehicle wherein the petitioners sustained injuries. The tribunal passed awards in favour of the claimants directing the 3rd respondent to initially pay compensation and recover the same from the first respondent under Section 149(4) of the Motor Vehicles Act, 1988 (in short 'the M.V. Act').

2. Heard the learned counsel for the appellant.

3. Learned counsel submitted that the award passed by the court below is legally inoperative insofar as the appellant is concerned. The appellant does not dispute the quantum of compensation awarded by the tribunal to the claimants. The only contention is regarding the

liability of the appellant company to pay compensation to the claimants since the policy pertaining to the car involved in the accident, said to be issued by the appellant, was cancelled for legal reasons before the accident. Therefore, the learned counsel for the appellant submitted that the tribunal committed an illegality in directing the appellant to pay compensation and then recover it from the owner of the vehicle.

4. Before dealing with the legal aspects I shall note the relevant dates. The accident admittedly took place on 10.08.2003. First respondent is the owner of the car involved in the accident, which was driven by the second respondent. She issued cheque on 16.07.2003 for getting a policy issued in her name in respect of the car. On the basis of the said cheque, the appellant issued a policy in the name of the first respondent on 18.07.2003. Ext.B7 is the policy produced. It covers a period from 18.07.2003 to 17.07.2004. Later, on 23.07.2003 the cheque issued by the first respondent (owner) was dishonoured. Exts.B3 and B4 documents would show that the cheque issued by the

owner of the car in favour of the appellant could not be encashed for want of sufficient funds in the account. Therefore, the appellant company intimated the matter to the owner of the car by letter dated 04.08.2003. Exts.B5 and B6 acknowledgment cards would show that the owner of the car (first respondent) received the letter on 07.08.2003. It is also the case of the appellant that the policy was cancelled before the date of accident. Thereafter, on 10.08.2003 the accident took place. Narration of these facts will show that the policy purported to be covering the vehicle was without consideration and it cannot be treated as a valid policy under law.

5. Learned counsel for the appellant placed reliance on a decision rendered by the Supreme Court in **United India Insurance Company Limited v. Laxmamma and others** [2012 (5) SCC 234] paragraph 26 reads as follows:

> 26. In our view, the legal position is this: where the policy of insurance is issued by an

authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Section 147(5) and 149(1) of the MV Act unless the policy insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insurer before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and insurance company is not liable to satisfy awards of compensation in respect thereof.

6. In this case, it is evident that the policy taken by the first respondent was not supported by

consideration and therefore, the appellant is legally entitled to content that there was no concluded contract between the appellant and the owner of the vehicle. Therefore, the tribunal committed a mistake in directing the insurance company to make payment of compensation to the claimants and then recover it from the owner and driver of the vehicle. The award passed by the tribunal to this extent is not legally correct.

In the result, the appeals are allowed. Award insofar as fixing the liability on the appellant (R3) is set aside. It is made clear that the amount awarded by the court below in respect of the car shall be paid by the owner and driver of the vehicle (R1 and R2).

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge