

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

MACA.No. 2482 of 2012 ()

(AGAINST THE AWARD IN OPMV 2108/2002 of M.A.C.T., PERUMBAVOOR
DATED 24-01-2007)

APPELLANT(S) /APPELLANTS:

FRANCIS K.T.
AGED 52, S/O.THOMAS, KANDAMANGALATHAN HOUSE
MANJAPPRA P.O., THAVALAPPARA, ALUVA TALUK
ERNAKULAM DISTRICT.

BY ADVS.SRI.REJI GEORGE
SRI.GOPAKUMAR G. (ALUVA)
SMT.ANUPAMA JOHNY
SMT.R.REMJI

RESPONDENT(S) /RESPONDENTS:

1. SABU AUGUSTINE
KANNAMPUZHA HOUSE, MANJAPPRA P.O., ALUVA 683 101.

2. THE NEW INDIA ASSURANCE CO.LTD., S.H.SHOPPING COMPLEX
ALUVA ROAD, ANGAMALY.

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

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR)

**P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.**

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M.A.C.A.No.2482 OF 2012
.....

Dated this the 8th September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

This appeal has been preferred by the claimant mainly being aggrieved of the inadequacy of compensation awarded by the Tribunal and also in exonerating the Insurance Company from the liability, despite the fact that there was valid policy coverage in respect of the vehicle involved and further that the same was a 'comprehensive policy' covering the risk of the pillion rider as well. The Tribunal exonerated the Insurance Company by placing reliance on the decision rendered by the Supreme Court in **2006(2) KLT 884 (United India Insurance Co. Ltd. vs. Tilak Singh)** to the effect that pillion rider is not covered under the policy and hence the challenge.

2. The accident occurred on 12.05.2002, when the petitioner was travelling as a pillion rider on the a motor cycle

bearing No.KL.7X-6391, who sustained injuries when the motor cycle overturned because of rash and negligent riding by the first respondent/owner. After completing the treatment availed in respect of the injuries, the appellant approached the Tribunal by filing the claim petition.

3. The first respondent, owner-cum-rider did not choose to contest the matter and was set ex parte . The claim was resisted by the Insurance Company by filing a written statement on general grounds and subsequently, raised additional grounds by way of additional written statement, to the effect that there was no liability for the insurance company to satisfy the claim in so far as no additional premium was collected from the first respondent to cover the pillion rider. The claimant was examined as P.W1 and documents were marked as Exts. A1 to A7 from his side. Copy of the policy was marked as Ext.B1 from the part of the respondents. The Tribunal arrived at a finding that the accident was only because of negligence on the part of the first respondent/rider of the motor cycle.

4. The claim of the appellant was that he was running a

Cycle shop and was earning Rs.4000/- per month. But observing that no evidence was adduced to substantiate the facts and figures, only a notional income of Rs.2000/- was reckoned and calculation was made, computing the amounts under different heads in the light of injuries sustained and consequences resulted. A total compensation of Rs.93,870/- was ordered to be satisfied with interest at the rate of 7% per annum . Observing that there was no valid coverage under the policy, the insurance company was exonerated in the light of the ruling of the Apex Court, reported in **2006(2) KLT 884 (SC)** [*cited supra*] and the first respondent was found solely liable and responsible to meet the award amount. This in turn is under challenge in this appeal filed by the claimant.

5. Heard the learned Counsel for both the sides.

6. When the matter came up for consideration before this Court earlier, it was asserted from the part of the appellant that the policy concerned herein was not an 'Act only Policy', so as to treat the pillion rider as a gratuitous passenger and to exclude him from the purview of coverage, but was a 'comprehensive

policy' which very much included the risk of the pillion rider as well. Hence it was contended that no reliance could be placed upon the decision rendered by the Apex Court in **2006(2) KLT 884**. Reference was also made to the Circular dated '16.11.2009' issued by the Insurance Regulatory and Development Authority (IRDA) to the effect that the claim, as in the instant case, is liable to be satisfied and honoured by the Insurance Company. It was accordingly, that an order was passed on 28.07.2015 by this Court directing the second respondent/insurer to produce copy of the Circular dated 16.11.2009 issued by the IRDA and also the terms and conditions attached to Ext.B1 policy, to adjudicate the issue in an effective manner. Pursuant to the said direction, a copy of the Circular has been produced by the Insurance Company as Annexure R2(a) and a copy of the terms and conditions of Ext.B1 policy has been produced as Annexure R2(b) along with the affidavit dated 10.08.2015. The matter is considered accordingly.

7. The liability of the Insurance Company in respect of a

pillion rider on a two wheeler as well as that of a passenger in a private car was always a subject matter of dispute for quite long. It is seen that the matter ultimately came to be considered by the IRDA, who is the competent authority to consider the issue with regard to fixation of tariff and terms and conditions of policy from 01.01.2007 (prior to which it was vested with the Tariff Advisory Committee till 31.12.2006). Fixation of quantum of premium to be satisfied, so as to provide coverage in the case of 'comprehensive policy' (which came to be subsequently renamed as "Standard Motor Package Policy") also came to be considered by the IRDA. The earlier Circulars issued by the IRDA, particularly those dated 18.03.1978 and 02.06.1986 were also considered, which were to the effect that **insured's liability** in respect of occupant(s) carried in a private car and pillion rider carried on a two wheeler would stand covered under the "Standard Motor Package Policy" and that the premium for the requisite extent was fixed accordingly. These aspects were considered again and the IRDA clarified the position as per Annexure R2(a) Circular dated 16.11.2009, clearly

holding that Insurer's liability under Section (II)1(i) of "Standard Motor Package Policy" (also called Comprehensive Policy) for Private Car and Two-Wheeler under the erstwhile India Motor Tariff very much included coverage to pillion rider on the motor cycle and occupant in a Private Car as well, so far as they are carried in the vehicle not for hire or reward. The Insurance Companies were also alerted that they were not permitted to abridge the scope of standard covers available under the erstwhile tariffs, beyond the options permitted in the erstwhile tariffs; also making it clear that any non-compliance in this regard would be viewed seriously by the IRDA.

8. Annexure R2(b) has been produced, which is a copy of the terms and conditions of Ext.B1 Policy. It is true that Ext.B1 policy was issued in the year 2001 (for the period 15.09.2001 to 14.09.2002), whereas the terms and conditions of the policy produced before this Court as Annexure R2(b) are shown as printed in the year '2014'. But since the Insurance Company has produced the same as the relevant terms and conditions

attached to Ext.B1 policy, this Court can reasonably presume that there is no change in the terms and conditions of policy. The policy deals with damage or loss to be compensated under three different heads :

- “i) loss of damage to the vehicle insured;*
- ii) liability to third parties; and*
- iii) personal accident cover for owner - driver .*

Section (II)1 (i) as mentioned above is extracted below:

" Section II- Liability to Third Parties

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of -

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured".

On a reading of the contents of Ext.R2(a) Circular issued by the

IRDA and the contents of the Circular Ext.R2(b), there cannot be any doubt that, if it is a "Standard Package Policy" (earlier Comprehensive Policy), coverage has to be provided by the Insurance Company in respect of the pillion rider as well. The scope of the said circular had come up for consideration before the Apex Court and after discussing the various aspects involved in detail, the law was declared as per the decision reported in **[2013] 1 SCC 731(National Insurance Company Limited vs. Balakrishnan and another)**. The crux of the said decision is that, there is black and white difference between an 'Act Only' policy and a 'Standard Package Policy/Comprehensive Policy'. It is true that 'comprehandive policy' does not mean that everything under the Sun will be covered as per the said policy. But in the case of a Standard Package Policy/comprehensive policy in respect of a private car/two wheeler, by virtue of stipulated extent of premium payable, and since it is given as a "package" while covering the risk in respect of the vehicle as well, the IRDA/competent authority was of the firm view that it should cover the risk of occupants in the private car/pillion rider

of the two wheeler as well.

9. However, since the details of policy produced before the Tribunal in the said case were never discussed either by the Tribunal or by the High Court, but for showing that it was only a comprehensive policy, the Supreme Court observed that it required to be ensured whether the policy concerned was a Standard Motor Package Policy, so as to have extended benefit to the occupant in the private car or pillion rider on the motor cycle. It was accordingly, that the matter was remanded to the Tribunal for considering this aspect, as to the nature of the policy to be dealt with, in the light of the terms and conditions of policy and such other vital particulars. The question is whether such a course should be pursued by this Court by remitting the matter to the Tribunal.

10. We have gone through the Circular, issued by the IRDA as well as the full text of the policy conditions produced before this Court as Annexure R2(a). We have also gone through the 'policy schedule', copy of which was made available during the course of hearing. In the policy schedule, premium has been

collected by the Insurance Company separately in respect of 'own damage' and 'liability to public risk', apart from the third party property damage.

11. In respect of the liability to public risk, a sum of Rs. 77/- has been collected, while a sum of Rs.50/- has been collected towards the third party property damage risk (unlimited); thus taking it to the total of Rs.127/-. In respect of the own damage premium, it is stated that Rs.480/- is the amount payable, out of which 'no claim bonus' to an extent of 30% (i.e. Rs.144/-) has been sanctioned and the balance alone was required to be satisfied (i.e. Rs.336/-). The net premium collected (i.e. 336 + 127) was Rs.463/- and adding the service tax to the requisite extent, the total figure was shown as Rs.486/-.

12. From the above, it is seen that the policy issued by the Insurance Company was not an 'Act only Policy'; which in fact was a '**Comprehensive Policy**', subsequently came to be renamed as '**Standard Motor Package Policy**'. The learned Counsel for the Insurance Company fairly concedes that, on

examining the matter with close scrutiny, it is seen that there exists coverage in respect of the pillion rider as well, under Ext.B1 policy. In the said circumstance, this Court finds that the verdict passed by the Tribunal, exonerating the Insurance Company is not correct and the same is hereby set aside.

13. Coming to the quantum of compensation payable, it is seen that the appellant was stated as running a 'cycle shop' with a monthly income of Rs.4000/-. Though the claimant was examined as PW.1, only a sum of Rs.2000/- was taken by the Tribunal as notional income, which does not appear to be correct. This is more so, since the claimant had crossed the age of '42 years' on the date of occurrence of the accident and he was maintaining a family of his own. Considering the fact that the accident was on 12.05.2002, we find it fit and proper to raise the income by 50% and we refix the same at **Rs.3000/-** per month.

14. The injuries sustained by the appellant as discussed in paragraph 10 of the award are in the following terms:

“ 1. Abduction at shoulder Gr.5

2. *Flexion elbow Gr.3*

3. *Extension at right elbow Gr.3.”*

The amounts awarded by the Tribunal under various Heads are in the following manner:

<i>Head</i>	<i>Amount awarded (Rs.)</i>
Loss of income	12000
Transportation expenses	2000
Extra nourishment	1000
Damage to clothings	250
Attendant's charges	1500
Medical expenses	42120
Pain and suffering	20000
Loss of amenities	15000
Total	93870

15. We find that, by virtue of enhancement of the monthly income, the appellant is entitled for an additional amount of **Rs.6000/- (18000-12000=6000)** towards loss of income. Considering the nature and extent of injuries and the adverse circumstances resulted, we find it fit and proper to grant a further sum of **Rs.5000/-** towards pain and suffering and **Rs.10000/-** towards loss of amenities. The balance

compensation payable under the above heads comes to **Rs. 21000/- (i.e. 6000 + 5000 + 10000= 21000)**; which shall be satisfied with interest at the rate of **9%** per annum. In view of the turn of events and since this Court has already arrived at a finding that there is valid coverage under the policy, we direct the Insurance Company to satisfy the amount awarded by the Tribunal and also the enhanced compensation ordered by this Court with interest at the respective rates, within one month from the date of receipt of a copy of the judgment.

The appeal stands allowed. No cost.

**P.R. RAMACHANDRA MENON,
JUDGE**

**K. HARILAL,
JUDGE**