IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

MACA.No.896 of 2007

AGAINST THE AWARD IN OP(MV)100/2004 of M.A.C.T OTTAPPALAM DATED 28-08-2006

APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LTD.,
REP.BY THE ADMINISTRATIVE OFFICER, REGIONAL OFFICE
M.G.ROAD, KOCHI-11.

BY ADV. SMT.RAJI T.BHASKAR

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 2 RESPECTIVELY:

1. C.P.SUNDARAN, S/O.THANKAPPAN,
AGED ABOUT 44 YEARS, CHETTIPPALLIYALIL HOUSE
POTTASSERI (PO), MANNARKKAD TALUK.

2. SANTHOSH KUMAR, S/O.KUMARAN,
AGED ABOUT 39 YEARS, THALACHIRA HOUSE, THENKARA P.O
ANAMOOLI, MANNARKKAD TALUK.

3. C.LATHEEF, S/O.ABOOBACKER,
AGED ABOUT 40 YEARS, CHEMPAN HOUSE,
PARAPPANANGADI P.O.

R1 & R2 BY ADV. SRI.K.MOHANAKANNAN
R1 & R2 BY ADV. SMT.A.R.PRAVITHA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

M.A.C.A No.896 OF 2007

Dated this the 29th day of May, 2015.

J U D G M E N T

Quite unfortunate is the fate of a pillion rider. Here is a pillion rider who suffered injury in a motor accident and he laid a claim to get compensation and that was allowed directing the Insurance Company to satisfy the claim and to recover it from the owner and driver of the vehicle.

2. In an accident which occurred on 10.08.2003, claimant before the court below was riding as pillion rider on a motor cycle No.KL 10 L 881 and on the way the vehicle met with an accident. With reference to the accident, a crime was registered as crime No.383/2003. The claimant laid a claim before the Tribunal who after issuing notice to the Insurance Company, considered the matter in detail.

3. Insurance Company entered appearance and contended that the Policy is an act policy and their liability is limited and that the Policy does not cover a pillion rider. They specifically

contended that no premium to cover the pillion rider has been paid by the owner of the vehicle. They also contended that that being the legal position, the principle of pay and recover will not apply to the facts of the case.

4. Evidence in the case consisted of Exts.A1 to A9 produced by the claimant and Ext.B1 is a copy of the policy produced by the Insurance Company.

5. The Tribunal found that the claimant is entitled to compensation of Rs.34,304/- under various heads. The Company was made liable for the said amount. Challenging the order of the Tribunal, the Company has come up in appeal.

6. In this appeal, the Company points out that the act of making them liable for the injury suffered by pillion rider on the terms of the policy issued cannot have support in law. It was only an act policy issued to the owner of the vehicle and it has been specified in the written statement by the Insurance Company that no additional payment has been paid to recover any amount for injury. In view of the decision in ***United India Insurance Co.Ltd., Shimla*** *vs.* ***Tilak Singh and others***

((2006) 4 Supreme Court Cases 404) followed in ***Oriental Insurance Co. Ltd*** *vs.* ***Sudhakaran*** (2008 (2) KLT 936 (SC)), it is contended that the act of Tribunal in mulcting the Insurance Company with liability cannot have support in law. Learned counsel therefore contended that the Insurance Company cannot be made liable and the Award to that extent is bad in law.

7. Learned counsel appearing for the respondents drawing attention of this Court to Section 147 of the Motor Vehicles Act contended that Section 147 does not draw any distinction between a gratuitous passenger, regular passenger or any other passenger and the Section only says 'any person'. Learned counsel also pointed out that the policy needs to cover only damages to the property of a third person. Therefore, it is contended on behalf of the respondents that the Legislature was conscious about the distinction between any person and a third party and one cannot import a third party while construing the words 'any person'. Learned counsel also pointed out that the decision in ***United India Insurance Co.Ltd., Shimla*** *vs.* ***Tilak Singh and others*** ((2006) 4 Supreme Court Cases 404) does

not represent the correct law for the simple reason that in the said decision a pillion rider has been equated as passenger in a goods vehicle which is not reasonable, just and proper even going by the provisions of the Act. Learned counsel drew the attention of this Court to Section 147 of M.V Act and pointed out that one need not labour much about a passenger in a goods vehicle for the simple reason that the statute itself excludes a passenger in a goods vehicle as is evidenced from Section 147. So to equate a pillion rider, according to the learned counsel, to that of a passenger in a goods vehicle is certainly unwarranted and is in fact unjustified. This crucial aspect has not been noticed by the court and therefore it is contended that the principle laid down in the above decision cannot have any application to the facts of the case.

8. Learned counsel appearing for the respondents also relied on the decisions in ***New India Assurance Co. Ltd*** *vs.* ***Hydrose*** (2008 (3) KLT 778) and also in ***United India Insurance Co. Ltd*** *vs.* ***Baby*** (2010 (2) KLT SN 71 (C.No.69)) and contended that in the light of the circular issued by the

Insurance Company, they are liable.

9. Though there may be considerable force in the submission made by the learned counsel for the respondents, in view of the decision in ***United India Insurance Co.Ltd., Shimla*** *vs.* ***Tilak Singh and others*** ((2006) 4 Supreme Court Cases 404) which was followed in ***Oriental Insurance Co. Ltd*** *vs.* ***Sudhakaran*** (2008 (2) KLT 936 (SC)), the scope for considering the arguments advanced by the learned counsel for the respondents is rather limited. True, it cannot be said that there is no substance in the arguments. In the so called basic decision i.e. ***United India Insurance Co.Ltd., Shimla*** *vs.* ***Tilak Singh and others*** ((2006) 4 Supreme Court Cases 404), after narrating the facts in law in paragraph 21 the court observes thus:

> "21. In our view, although the observations made in *Asha Rani* case 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".

Obviously, the conclusion drawn by the Apex Court is that a pillion rider is not covered by the policy on the basis that they are to be equated to the position of a passenger in a goods vehicle.

10. Learned counsel for the respondents may be justified in his submission that the analogy drawn is quite unfortunate and that Section 147 of M.V Act itself draws a distinction. Learned counsel brought to the notice of this Court Section 147 (1) proviso (i)(c) and pointed out that one need not labour much about the act policy covering the case as against goods carriage for the simple reason that the statute itself extrudes the liability. But there is no such exclusion as far as a pillion rider is concerned and the learned counsel pointed out that the words used in Section 147(1)(b) is 'any person' in contra distinction to the damages to the property of a third party.

11. Of course, these are matters which require consideration. But, unfortunately for the respondents, this Court is bound by the decisions of the Apex Court and it has been clearly held in the decision cited above that pillion rider is not

covered by the act policy. The decisions relied on by the learned counsel for the respondents may not have application to the facts of the case for the simple reason that in the decision in ***New India Assurance Co. Ltd*** *vs.* ***Hydrose*** (2008 (3) KLT 778) it was found that it is a 'B' policy and the conditions cover gratuitous passenger. In the decision in ***United India Insurance Co. Ltd*** *vs.* ***Baby*** (2010 (2) KLT SN 71 (C.No.69)), it was a package policy that had come up for consideration.

12. Learned counsel appearing for the appellant may be justified in her submission that the terms of the policy construed in the two decisions relied on by the learned counsel for the respondents are quite distinct, separate and independent and it is not with reference to an act policy. Going by the terms of the policy, it would appear that it covers gratuitous passengers. Admittedly, learned counsel pointed out that the case on hand is covered by act policy which, going by the decisions of the Apex Court, will not cover pillion rider.

13. Bound by the decisions of the Apex Court, this Court is to apply the principles as laid down by the Apex Court. If that be

so, the Award certainly calls for interference of the court below so far as it makes the Insurance Company liable for the issue. It is also well settled that when a policy does not cover any particular category of person, principle of pay and recover also cannot apply.

For the above reasons, this appeal is allowed and that part of the Award making the 3rd respondent i.e. the Insurance Company liable for the amount of compensation payable by the respondents 1 and 2 is set aside.

Sd/-

P.BHAVADASAN
JUDGE

smp

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P.A. to Judge.