IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

MACA.No. 434 of 2011 ( )

AGAINST THE AWARD IN OPMV 1892/2003 of M.A.C.T.,NEYYATTINKARA

APPELLANT/APPLICANT:

MURALI @ MURALEEDHARAN,THRIVENI,
ARAYOOR P.O, NEYYATTINKARA.

BY ADVS.SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS/RESPONDENTS 1,2 & ADDL.3RD RESPONDENT:
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1. P.BALAKRISHNAN,TC 4/55, OOKATTUVILAKATHU VEEDU, MELAMCODE, NEMOM P.O THIRUVANANTHAPURAM.695020

2. THE MANAGER, UNIGED INDIA INSURANCE CO.LTD, MAIN ROAD, MARTHANDAM KANYAKUMARI DIST.695603

3. THE CHAIRMAN/SECRETARY, TARIFF ADVISORY COMMITTEE HEAD OFFICE, ADORE HOUSE, IST FLOOR B.K.DUBASH MARG, MUMBAI.400001

R1 BY ADV. SRI.S.MOHAMMED AL RAFI
R2 BY ADV. SRI.K.KESAVANKUTTY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.

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M.A.C.A.No.434 OF 2011

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Dated this the 5th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant was travelling as a pillion rider in a motor cycle through the National Highway on 28.2.2003. Due to deflection, it appears that the vehicle overturned and he was thrown on the road. Multiple head injuries were caused to him and he was treated in the Medical College Hospital, Thiruvananthapuram. He was aged 26 years at the time of accident and it was claimed that he was an autorickshaw driver earning Rs.5,000/- per month.

2. The insurance company contended that the policy is an act only policy and as he was a gratuitous passenger he will not be covered under it and hence the said company is not liable to pay the compensation.

3. The Tribunal awarded compensation to the tune of Rs.2,23,151/- with interest at 9% per annum from the date of

application i.e. 1.12.2003. The liability was cast on the first respondent, owner of the vehicle. Before this Court, learned counsel for the appellant, Shri R.T. Pradeep submitted that the insurer will be liable under the policy. Shri Kesavankutty, learned counsel for the insurance company submitted that there is no liability for the insurance company, since Ext.B1 is an act only policy.

4. Learned counsel for the appellant relied upon a decision of the Apex Court in **Bhagyalakshmi and others v. United India Insurance Company Ltd. and another {(2009) 7 SCC 148}** and that of this Court in **Oriental Insurance Co. Ltd. v. Daniel (2000 ACJ 1391)**. It is also contended that the instructions of the Tariff Advisory Committee ought to have been relied upon by the Tribunal. The Tribunal considered the matter in paragraph 18 of the award. The Tribunal relied upon the judgment of the Apex Court in **United India Insurance Co. Ltd. v. Tilak Singh (2006 (2) KLT 884 - SC)** and the **Oriental Insurance Co. Ltd. v. Sudhakaran (2008 (2) KLT 936 - SC)** in rejecting the contentions of the appellant.

5. The learned counsel for the appellant relied upon the instructions of the Tariff Advisory Committee to contend for the position that those should have been held to be incorporated in the policy and therefore the Insurance company cannot contend for the position that additional premium should be paid to cover a person like the appellant. It is therefore submitted that the finding rendered by the Tribunal cannot be sustained.

6. A recent judgment of a learned Single Judge of this Court in M.A.C.A.No.1104/2010, covering the said legal issue has been brought to our notice.

7. The contention raised by the learned counsel for the respondent therein was that the decision of the Apex Court in **United India Insurance Company Limited v. Tilak Singh and Others (2006(4) SCC 404)** is per incuriam of a notification issued by the Insurance Tariff Advisory Committee. The learned Single Judge referred to the provisions under the Insurance Act, 1938, namely Section 64-UC(1) and its proviso under which the Tariff Advisory Committee gets powers to act. It was held in paragraph 6 thus :

"6. According to the learned counsel for the appellant, the said Committee has merely recommendatory powers, and such powers cannot be used to legislate. It is also argued that the decisions that may be taken by such a Committee cannot make any of the provisions of the statute otiose. On going through Section 147(1)b(i) of the Motor Vehicles Act, it is evident that the said provision is applicable to all motor vehicles other than public service vehicles. It is trite law that the term " injury to any person" as contained in Section 147(1) (b)(i) is confined to third parties alone. That is evident from the subsequent wording in the said provision " including owner of the goods or his authorised representative carried in the vehicle". Therefore, the requirements of the insurance policy for coverage is confined to owner of the goods or his authorised representative carried in the vehicle in the case of motor vehicles other than public service vehicles. In the case of passengers of public service vehicles, the requirement is one as contemplated under Section 147(1)(b)(ii) of the Motor Vehicles Act. It is based on the said provisions, it was held in United India Insurance Company Limited v. Tilak Singh and others [(2006) 4 SCC 404] that in the case of an 'act only policy', a gratuitous passenger or the pillion rider is not covered, unless extra premium for such coverage is paid. In National Insurance Company Limited v. Balan @ Balakrishnan and Others (2008 (1) KHC 202) also, it was held that in the case of an 'act only policy', there is no coverage for the gratuitous passenger of a private vehicle, unless extra premium for such coverage is paid.”

8. With regard to the effect of the notification issued by the Tariff Advisory Committee, it was held that the same has no force of law. We perfectly agree with the above view.

9. Reliance placed on the decision of a Division Bench of this court in **Oriental Insurance Co. Ltd. v. Daniel (2000 ACJ 1391)** also will fail in the light of the subsequent decisions of this court including of Full Benches, contrary to it. In the said decision, the Division Bench held that the gratuitous passenger in a private car is a third party and insurance company is liable under the Act policy. The Division Bench also relied upon the instructions issued by the Tariff Advisory Committee requiring the Insurance Company to mandatorily incorporate a clause in the insurance contract reading “ death of or

bodily injury to any person including occupants carried in the motor car provided that such occupants are not carried for hire or reward". The above view obviously cannot be sustained in the light of the subsequent decisions of the Apex Court and this Court. A Full Bench of this Court in **United India Insurance Co. Ltd. v. Celinamma (2003(1) KLT 701 (F.B.)** considered the provisions under the Motor Vehicles Act 1939, namely Section 95 and held that " gratuitous passenger in a goods vehicle is not entitled to insurance coverage if the policy is taken only to cover the risk compulsorily coverable under the Statute ('Act policy'). It was also held that a gratuitous passenger travelling in a private vehicle is also not entitled to insurance coverage under the Motor Vehicles Act, 1939 if the policy is taken only to cover the risk compulsorily coverable under the Statute. In other words, a statutory insurance does not cover injuries suffered by the occupants of the vehicle who are not carried fore hire or reward and the insurer cannot be held liable under the Act. The Bench had relied on the decision of the Apex Court in **Dr.T.V.Jose v. Chacko P.M. (AIR 2001**

SC 3939) in this context.

10. A later decision of another Full Bench of this court is also relevant in this context. Therein the Full Bench examined Section 147 of the Motor Vehicles Act 1988 . The same is reported as **Mathew Joseph v. Janaki** (**2007 (1) KLT 747 (F.B.)** . The Full Bench held as follows :

> " Gratuitous passengers in transport vehicles, including a motor cycle, can have coverage only when a comprehensive policy or extended policy as might be possible to be issued has been availed of by owner of vehicle."

11. The Apex Court in **United India Insurance Co. Ltd., Shimla v. Tilak Singh and others [(2006) 4 SCC 404]** elaborately considered the above legal aspects. Their Lordships also referred to the provisions under the Motor Vehicles Act, 1939 and the decision of the Apex Court in **Pushpabai Purshottam Udeshi v. Ranjith Ginning & Pressing Co.(P) Ltd. [(1977) 2 SCC 745]** as well as provision of 1988 Act and subsequent decisions. In **Pushpabai's** case

(supra), the Apex Court had held that " it is not required that a policy of insurance should cover risk to the passengers who are not carried for hire or reward. As under Section 95 the risk to a passenger in a vehicle who is not carried for hire or reward is not required to be insured, the plea of the counsel for the insurance company will have to be accepted and the insurance company held not liable under the requirements of the Motor Vehicles Act."

12. Regarding the provision under The 1988 Act, their Lordships in **Tilak Singh's** case (supra) noticed the decision of the Apex Court in **<u>New India Assurance Co. Ltd. v. Satpal Singh [(2000) 1 SCC 237)</u>** which was subsequently overruled by the judgment of a Bench of three Judges in **<u>New India Assurance Co.Ltd v. Asha Rani [(2003) 2 SCC 223]</u>**. Finally the Apex Court upheld the contention of the Insurance Company that the Insurance Company owned no liability towards the injuries suffered by the deceased in that case 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. We find from the judgment of the Apex Court in **Bhagyalakshmi and others v. United Insurance Company Limited and Another [(2009) 7 SCC 148]** that the question whether a passenger would be a third party or not within the meaning of the provisions of the 1988 Act and will be covered under a policy has been referred to a larger Bench again.

13. As the law now stands, we find that in the light of the decision of the Full Bench of this Court in **Mathew Joseph's** case (supra) and that of the Supreme Court in **United India Insurance Co. Ltd., Shimla v. Tilak Singh and others [(2006) 4 SCC 404]**, the appellant cannot successfully contend for the position that being a pillion rider, he is covered under the act policy. Therefore we affirm the view taken by the Tribunal that the Insurance Company is not liable to satisfy the amount awarded as the policy Ext.B1 is only a statutory policy.

14. We heard the learned counsel on both sides on the quantum of compensation also. The appellant was admitted in the Medical

College Hospital from 28.09.2003 to 13.10.2003. The appellant had sustained various injuries and it is clear from paragraph 14 of the award that CT scan head showed hyper dense lesion involving corpus collosum and MRI Scan revealed fracture of D8 vertebral body and defective conduction through right medial ulnar nerves. Ext.A8 is the discharge summary which shows that he was again admitted for treatment in the medical college hospital on 8.12.2003 to 10.01.2004 for brachial plexus injury right; compression fracture D8 body and brachial monoplegia with sensory impairment. He had undergone treatment in the Sree Saradha Ayurvedic Hospital, Kanyakumari also for related ailments caused in the accident, for the period from 4.8.2004 to 23.08.2004. Thus he was under treatment in three different spells for a period of 70 days.

15. The disability certificate issued by the Medical Board, Medical College Hospital recorded that the appellant had post traumatic brachial pluxes injury right side totally and they have recorded 50% moderate permanent residual disability. The Tribunal in paragraph 15 considered the said certificate and after observing the

petitioner who was present was of the view that the permanent residual disability is only to the extent of 30%.

16. The Tribunal has assessed compensation under the various heads as revealed from paragraph 17. ₹ 25,000/- each has been granted for pain and suffering and loss of amenities and enjoyment in life, ₹1,22,400/- for permanent disability and ₹24000/- for partial loss of earnings have been granted and amounts have been granted under different heads namely transportation expenses ₹5,000/-, ₹2,000/- for extra nourishment and ₹7,000/- towards bystander expenses, ₹12,251/- for medical expenses and ₹500/- towards damage to clothing.

17. The monthly income fixed is ₹2,000/-. He claimed that he was an auto driver and was getting ₹5,000/- per month. The accident is of the year 2003. Therefore we find it reasonable to fix the monthly income at ₹4,000/-. As far as bystander's expenses are concerned, it is seen that he was treated as inpatient for a period of 70 days and therefore @ ₹150/- per day, the amount will be ₹10,500/-. Partial loss of earnings have been granted for 13 months. At the rate of ₹4,000/-, it

will be ₹52,000/-. The amount awarded towards pain and suffering is also inadequate going by the details of injuries and the period of treatment and we enhance the same to ₹40,000/-. For permanent disability, he will be entitled to ₹2,44,800/- (4000 x 12 x 17 x 30%), instead of ₹1,22,400/- granted by the Tribunal. The Tribunal also found that as far as permanent disability is concerned, there is residual disability going by brachial pluxes injury to the right side and therefore it will cause much inconvenience and loss of amenities to the appellant and we enhance the amount granted under loss of amenities and enjoyment in life to ₹ 50,000/-.

18. Accordingly, the compensation is recomputed in the following manner :

Head of claim	***Amount Awarded in rupees***
Loss of earnings	52000
Transportation expenses	5000
Extra nourishment	2000
Damage to clothing	500
Medical expenses	12251
Bystander expenses	10500

Head of claim	*Amount Awarded in rupees*
Pain and suffering	40000
Loss of amenities and enjoyment in life	50000
Permanent disability	244800
Total	417051 Rounded off to ₹4,17,050/- (Rupees four lakhs seventeen thousand fifty only)

The Tribunal has granted interest @ 9% per annum from the date of petition which we confirm. Accordingly, the appeal is allowed and the appellant is entitled to an amount of ₹4,17,050/- from the first respondent with interest @ 9% per annum. The court fee, if any, payable for the enhanced amount will be paid by the appellant before the Tribunal.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

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