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 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

MACA.No. 268 of 2009 ( )

AGAINST THE AWARD IN OPMV 1038/2002 of M.A.C.T.,NEYYATTINKARA DATED 28-07-2008

APPELLANT/RESPONDENT NO.3:

NEW INDIA ASSURANCE CO.LTD
DIVISIONAL OFFICE, THIRUVANANTHAPURAM
REP. BY ITS MANAGER.

BY ADVS.SRI.KKM.SHERIF
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS/PETITIONER, RESPONDENT NO.1 & 2:
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1. DR.A.BALASUBRAMANIAN,
S/O.S.R.AATHIMOOLAM, ADITYA ILLOM, A-29
NEW COLONY, SUBHRAJ NAGAR, BODINAICKANOOR
THENI DISTRICT, TAMIL NADU.

2. M.B.PREMKUMAR, MOHAN VIHAR,
KOOVALASSERRY PO., PIN-695 512.

3. M.B.PADMAKUMAR, AMARAVATHY, PONGUMOODU,
KOOVALASSERRY PO, PIN-695512.

R1 BY ADV. SRI.NAGARAJ NARAYANAN
R1 BY ADV. SRI.RAJAN VELLOTH
R1 BY ADV. SRI.SAIJO HASSAN
R1 BY ADV. SRI.A.S.SABU
R1 BY ADV. SRI.RAFEEK. V.K.
R1 BY ADV. SRI.PRATHAP PILLAI
R2 & 3 BY ADV. SRI.R.T.PRADEEP

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.268 OF 2009

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Dated this the 9th day of June, 2015

<u>JUDGMENT</u>

<u>Ramachandran Nair, J.</u>

In this appeal filed by the Insurance Company, the only question is regarding the liability, if any, to satisfy the award. The total amount awarded by the Tribunal is ₹2,99,380/- along with interest @ 7.5%.

2. The accident occurred on 10.2.2002 while the claimant, a veterinary surgeon of 31 years was travelling along Kattakkada-Neyyattinkara road as a pillion rider on the motor cycle bearing Reg.No.KBV 7453. It was alleged that the second respondent swerved the motor cycle and applied the break and he was thrown out and sustained the injury. He had suffered internal derangement of right knee, fracture to the radius of both forearms and other external injuries. He was admitted in PRS Hospital, Thiruvananthapuram where various treatment procedures were extended and surgeries were also conducted. Before the Tribunal, evidence was let in by the applicant. He was

examined as PW1 and Exts.A1 to A16 have been marked. There was no contra evidence on the part of the respondents before the Tribunal, including the appellant.

3. The learned counsel for the appellant submits that the policy is only an Act only policy' and therefore the Company is not liable. It is submitted by the learned counsel for the respondents that there was no such contention before the Tribunal and therefore for not raising such a contention and not producing the policy before the Tribunal to explain its terms, adverse inference was drawn for withholding the best evidence. The said view cannot be a perverse one. It is therefore submitted that there is no error in the award passed by the Tribunal.

4. In paragraph 4 of the written statement, the averment is that " the statement that vehicle involved in the alleged accident bearing No.KBV 7453 scooter was insured with this respondent is correct and the policy was valid at the time of accident."

5. Evidently, there is no contention that the company is not liable to satisfy the award. In this context, the learned counsel for the

Insurance Company submits that actually an argument was raised before the Tribunal and therefore in the light of the production of the policy in this appeal, the said question could be considered by this Court.

6. Before the Tribunal, respondents 1 and 2 were ex parte. In paragraph 13, the Tribunal has found that even though it was admitted by the Insurance Company that the vehicle concerned had valid insurance policy as on the date of the accident, it has not opted to produce the policy. It is also held that the insurer has to be presumed to have had exclusive knowledge as to the terms and conditions of the policy. Had it been an Act only policy, it could have been proved by a mere production of the policy or a copy of the same. It is also concluded by the Tribunal that in the written statement, there is no proper plea that being an Act Only Policy, the applicant is not entitled to support a claim as against the insurer. Therefore, since the best evidence has been presumed to have been withheld by the Insurance Company, the Tribunal has drawn an adverse inference under Section 114(g) of the Indian Evidence Act and accordingly it was held that the

Insurance Company is liable.

7. True that the copy of the Policy produced before this Court along with an application is in relation to the vehicle involved in the accident. As far as the production of additional documents before the appellate Court is concerned, the appellant will have to satisfy the conditions under Order XLI Rule 27 also. It is a case where even in the written statement proper contentions were not taken. Therefore the learned counsel for the respondents is right in his contentions.

In the absence of a contention that the pillion rider is not covered under the policy in question, this Court cannot embark upon an enquiry on the said question. We therefore agree with the learned counsel for the respondents to that extent. As far as the quantum of compensation is concerned, according to us, the award is reasonable.

Accordingly, the appeal is dismissed. There will be no order as to costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

sv. **K.P.JYOTHINDRANATH,JUDGE**