IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

MACA.No. 1488 of 2011 ( )

AGAINST THE AWARD IN OPMV 1910/2000 of II ADDL. MACT, KOZHIKODE DATED 23-04-2008

APPELLANT(S):

PATHUMMAYI M.T.,
AGED 65 YEARS, W/O.BEERANKOYA,
MAKKADOL THAZHATH HOUSE,
MAKKADA P.O., KAKKODI,
KOZHIKODE DISTRICT.

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENT(S):

1. E.T.SREEDHARAN, SON OF CHANDUKUTTY, ERAKKATTUTHAZHAM HOUSE, MAKKADA P.O., VIS. KAKKODI, KOZHIKODE DISTRICT, PIN-673 617.

2. SANATH KUMAR E.T., SON OF SREEDHARAN, AGED 39 YEARS, ERAKKATTUTHAZHATH HOUSE, MAKKADA P.O., KAKKODI, KOZHIKODE DISTRICT, PIN-673 617.

3. NATIONAL INSURANCE COMPANY LIMITED, MAVOOR ROAD BRANCH, KOZHIKODE, PIN-673 001.

4. RUKKIYA M.T., AGED 34 YEARS, D/O.BEERANKOYA, MAKKADO, THAZHATH HOUSE, MAKKADA P.O., KAKKODI, KOZHIKODE DISTRICT, PIN-673 001.

5. USMAN KOYA M.T., AGED 45 YEARS, SON OF BEERAN KOYA, DO. DO.

6. AYISHABI M.T., AGED 43 YEARS, D/O.BEERANKOYA, DO. DO.

7. KAREEM M.T., AGED 42 YEARS, SON OF BEERAN KOYA, DO. DO.

8. **NAZEER M.T., AGED 41 YEARS, SON OF BEERAN KOYA,**
   DO. DO.

9. **NABEESA M.T., AGED 40 YEARS, D/O.BEERANKOYA,**
   DO. DO.

10. **ZUHARA M.T., AGED 36 YEARS, D/O.BEERANKOYA,**
    DO. DO.

R3 BY ADV. SRI.M.A.GEORGE(B/O,NO MEMO)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1488 of 2011

Dated this the 28th September,2015

JUDGMENT

Ramachandra Menon, J.

Appellant is the first claimant. The main grievance is with regard to the relief granted by the Tribunal in favour of the Insurance Company, whereby they have been absolved from the liability in satisfying the claim in respect of the death of the appellant's son, who was a passenger in a private jeep (except an extent of ₹20,000/-), for the reason that, as per Exhibit P1 policy, stated as a 'comprehensive policy', only such extent of coverage was available to the passengers in view of the collection of premium of ₹15/- in this regard.

2. The sequence of events revealed from the proceedings is that the appellant's son was travelling as a passenger in a jeep bearing registration No.KL-13/6555 on

26.3.2000. While so, because of the rash and negligent driving by the driver of the jeep, son of the appellant happened to be thrown out from the vehicle, who sustained fatal injuries and finally succumbed to the same. This led to the Claim Petition preferred by the mother and siblings of the deceased. The claim was sought to be resisted by the Insurance Company pointing out that there was no valid insurance coverage. The only evidence adduced before the Tribunal was Exhibits A1 to A5 (Police records) and a certificate issued by the Village Officer (A3), besides, Exhibit B1, which is a copy of the insurance policy. No oral evidence was adduced by either side. On conclusion of the trial, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the jeep and proceeded to award compensation accordingly.

3. Taking note of the relevant facts and figures, various amounts were awarded, which comes to a total of ₹1,89,000/-, an this was directed to be satisfied with interest at 7% per annum from the date of filing of the

petition, till satisfaction. The Tribunal also observed that, only a sum of ₹15/- was collected from the insurer towards the premium for meeting the legal liability of passengers in the private jeep. Observing that Exhibit P1 policy provided for coverage to an extent of ₹20,000/-, the said amount of ₹20,000/- was directed to be satisfied by the Insurance Company and the balance was ordered to be satisfied by the owner and driver of the vehicle. This, in turn, is sought to be challenged by the first claimant, pointing out that the observation of the Tribunal as to the scope of coverage under Exhibit B1 policy is not correct and proper.

4. When the matter came up for consideration before this Court earlier, the delay of 346 days in re-presenting the appeal after curing the defect was condoned as per order dated 22.9.2011 in C.M.Appl.No.2218 of 2011. On the same day, the application to condone the delay of 767 days in filing the appeal was also considered. When the learned counsel for the appellant submitted that the appellant only wanted to

challenge the exoneration of the third respondent Insurance Company in part, the delay was condoned as per order dated 25.10.2011, holding that, if any enhancement was ordered, the appellant would not be entitled for interest for the period of delay. However, in view of the earlier order dated 22.9.2011, the learned counsel for the appellant asserts and affirms that the grievance is only with regard to the exoneration of the Insurance Company and that the policy issued was actually a 'comprehensive policy', by virtue of which coverage was there to the passengers as well.

5. During the course of hearing, a copy of the policy was placed for consideration, which is styled as a 'comprehensive policy'. A sum of ₹1,715/- was collected in respect of the 'own damage' and such other amounts towards the unlimited third party property damage, personal accident coverage to the passengers etc., totalling a sum of ₹2,403/-. Admittedly, the policy was valid for the period from 28.12.1999 to 27.12.2000. The only point to be considered is whether the policy issued

was liable to be taken as one to have extended coverage to the passengers in the private jeep as well.

6. A similar issue had come up for consideration earlier and as per judgment dated 8.9.2015 in M.A.C.A.No.2482 of 2012, this Court analysed the scope of similar policies styled as 'comprehensive policies' (which subsequently came to be styled as 'standard package policy'). The Circular dated 16.11.2009 issued by the IRDA in this regard was also adverted to. The IRDA is the competent authority to consider the issue with regard to fixation of terms and conditions of the policy from 1.1.2007. Fixation of quantum of premium to be satisfied, so as to provide statutory coverage in the case of 'comprehensive policy' (which came to be subsequently renamed as 'standard package policy') had also come up for consideration before the IRDA. It was after making a reference to the earlier Circulars dated 18.3.1978 and 2.6.1986, that the IRDA made it clear as per the aforesaid Circular dated 16.11.2009, that in the case of 'standard package policy' (earlier comprehensive policy), the

tariff/premium was fixed in such a manner so as to include coverage to the pillion rider on a two wheeler as well as passenger in a private car as well. The said policy was stated as being offered as a "package" and as such, it was not correct or proper for the Insurance Company to collect anything more than the stipulated premium, to have coverage to the pillion rider/passenger in the private vehicle. A clear finding was rendered by this Court that the Insurance Company was liable to ensure the liability in respect of a pillion rider or passenger in a private car, if the policy issued was a 'comprehensive policy' or 'standard package policy' as it came within the purview of the Circular dated 16.11.2009 issued by the IRDA.

7. Coming to the policy issued in the instant case, the learned counsel for the Insurance Company fairly submits that, as per the instruction now obtained, Exhibit B1 policy, which was issued as a 'comprehensive policy', very much comes within the purview of the Circular dated 16.11.2009 issued by the IRDA. As it stands so, there cannot be any dispute that the award amount ordered by

the Tribunal has to be satisfied completely by the Insurance Company.

Accordingly, we modify the award passed by the Tribunal and hold that the award amount shall be satisfied by the Insurance Company. The balance amount, after satisfying a sum of ₹20,000/- with interest as ordered by the Tribunal, shall be deposited within one month from the date of receipt of a copy of this judgment. The claimant will be entitled to withdraw the full amount immediately on deposit.

Appeal stands allowed to the said extent.

P.R.RAMACHADRA MENON
JUDGE

K.HARILAL
JUDGE

vgs29/9/15