IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

MACA.No. 1788 of 2011 ( )

AGAINST THE AWARD IN OPMV 377/2003 of ADDL.M.A.C.T., THRISSUR
DATED 13-05-2011

APPELLANT:3RD RESPONDENT IN O.P(MV) NO.377/03

THE NATIONAL INSURANCE COMPANY LTD.
BRANCH OFFICE, AMBIKA ARCADE,
M.G.ROAD, THRISSUR, REP.BY
ITS MANAGER, REGIONAL OFFICE,
M.G.ROAD, ERNAKULAM.

BY ADV. SRI.LAL GEORGE

RESPONDENT(S):PETITIONERS 1 TO 3 & RESPONDENTS 1 & 2 IN O.P(MV).
377/03
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1. ARAVINDAKSHAN, AGED 50 YEARS,
S/O.LATE RAVUNNY, KIZHAKKEPURAKKAL HOUSE,
P.O MATTATHURKUNNU, VIA-KODAKARA,
THRISSUR DISTRICT - 680 664.

2. ANU ARAVIND, AGED 24 YEARS,
S/O.ARAVINDAKSHAN,
KIZHAKKEPURAKKAL HOUSE,
P.O MATTATHURKUNNU, VIA-KODAKARA,
THRISSUR DISTRICT - 680664.

3. ASHA ARAVIND, AGED 21 YEARS,
D/O.ARAVINDAKSHAN,
KIZHAKKEPURAKKAL HOUSE,
P.O MATTATHURKUNNU, VIA-KODAKARA,
THRISSUR DISTRICT - 680664.

4. P.K.THOMAS, S/O.KOCHAPPU,
PULIKODAN HOUSE, PERUVANKULANGARA,
OLLUR, THRISSUR DISTRICT-680 306.

5. PRADEEP @ KANNAN, S/O.RAMU,
MANPARAMBIL HOUSE, P.O.VENGINISSERY,
VENGINISSERY, THRISSUR DISTRICT-679 516.

R,R1-3 BY ADV. SRI.P.V.CHANDRA MOHAN
R,R4 BY ADV. SRI.JIJO PAUL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 19-03-2015, THE COURT ON 25-03-2015 DELIVERED THE FOLLOWING:

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

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M.A.C.A No.1788 of 2011

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Dated this the 25th day of March, 2015

JUDGMENT

Asha, J.

The insurance company has filed this appeal on the ground that pillion rider was not covered by the insurance policy, as the policy in question was a liability only policy and no additional premium was paid to cover the pillion rider. It is therefore the contention of the insurance company that it is not liable to indemnify the owner of the vehicle and hence the award directing them to pay the compensation to the claimants is erroneous.

2. The claim petition was filed by the legal heirs of deceased Malathi , who succumbed to the injuries sustained to her in a motor vehicle accident which occurred on 19.11. 2002. While she was travelling as pillion rider on a motorcycle with the registration number KCE 9384 along Venginisserry Ashramam

Aikunnu public road, the rider of the motorcycle applied sudden break, causing fatal injuries to her. The legal heirs of the deceased Malathi , who are respondents 1 to 3 herein, filed claim petition before the Tribunal seeking compensation of Rs. 6 lakhs. The tribunal awarded a sum of Rs. 4 90,150/-and directed the insurance company to pay the same. The appeal is filed as against this direction.

3. Before the Tribunal, the original owner –the 1st respondent in the claim petition-filed a written statement stating that he is not the registered owner of the vehicle as he had already sold the motorcycle to the 2nd respondent in the claim petition (rider) on 7/5/2002 and that the motorcycle is having valid coverage of insurance by the 3rd respondent-the appellant herein.

4. The 2nd respondent in the claim petition-the subsequent owner cum rider- filed a written statement denying any sort of negligence on his part spot and finally stating that in the event of any negligence being found against him, and compensation if any is awarded in favour of the claimants, the same may be realised

from the 3rd respondent-insurance company. He stated that he was having valid license and the vehicle was having insurance coverage for the period from 14/9/2002 to 13/9/2003.

5. The insurance company filed written statement admitting the coverage of policy for the vehicle. But at the same time it was stated that pillion rider is not covered by the policy and therefore the 3rd respondent is not liable to pay any compensation, as there is violation of policy condition. They also denied the allegation as to negligence on the part of the 2nd respondent and sought permission under section 170 of the Motor Vehicles Act to contest the case. It is the case of the insurance company that it has not collected any additional premium in order to cover the risk of pillion rider.

6. Before the court below the claimants produced the photocopy of the policy issued to the owner of the vehicle, which was marked as Exhibit A 8. The insurance company produced another document as policy issued to the vehicle, which was marked as Exhibit B1. At the instance of the claimants, the police records including the records of the vehicle, seized by the police

were called for from the Judicial 1st class Magistrate Court No. 2, Trissur and marked as Exhibit X1 series and the policy documents were marked as Ext X1(a), (b) and (c). The insurance company examined the Assistant Manager who issued the policy as RW1.

7. The court below after analysis of the materials on record found that the pillion rider was covered by the policy issued to the owner of the motorcycle involved and hence the insurance company was liable to indemnify the owner of the motorcycle . Tribunal directed them to pay the compensation to the claimants as per the award passed by it. The insurance company is aggrieved by the findings of the tribunal.

8. We heard the learned counsel appearing for the insurance company as well as the learned counsel appearing for the claimants. According to the insurance company the Tribunal erred in coming to the conclusion that the policy in question was not an act only policy. It is argued that no premium was paid in order to cover the pillion rider. According to the insurance company the premium paid was for the owner -driver and third-

party alone and it was specifically stated in the policy that the same is a liability only policy.

9. On the other hand the learned counsel appearing for the claimants pointed out that the contents of Exhibit B1 policy produced by the Insurer-appellant and the contents of Exhibit A8 policy- photocopy of the policy issued to the owner as well as Exhibit X1(a) to X1 (c) in the records of police are different. Moreover it is also pointed out that Exhibit B1 is one issued on 11th November 2003 whereas Ext A8 as well as Exhibit X1 series are issued on 13. 09. 2002. Comparing the contents of the documents, it is contended that a fabricated document was produced as Exhibit B1 in order to get absolved from the liability to pay compensation. According to the claimants the conclusion of the tribunal is correct and no interference is required as claimed in the appeal.

10. We have considered the rival contentions with reference to the materials on record. The dispute is with respect to the nature of the policy issued by the insurance company in respect of the motorcycle with the registration number KCE

9304 and whether the pillion rider is covered by the policy. The Tribunal has disbelieved the version of the insurance company.

11. On a perusal of Exhibit A8 and Exhibit B1, we could see that there is considerable difference in its contents. At the same time the contents of Exhibit A8 and Exhibit X1 series are one and the same. Both the documents are shown as **liability only** on the right-hand side of the 1st page. In Exhibit A8 the particulars of vehicle insured are shown in as follows :

registered mark number	Make	Year of mft	Chases no	Engine no	Cubic capacity	Seating capacity

The effective date of commencement of insurance is shown as from 00.00 0 clock on 14/09/2002 to midnight of 13/09/2003.

The 2nd page contains the schedule of premium as follows:

schedule of premium				
A: O D-basic		B. T. P-basic	175.00	
		A DD: PA to passengers/owner-driver	50.00	
		Number 0, amount 0		
		Gross (B)	225	
		Gross OD& TP	225	
		Loading on TP premium	175 .00	
Gross (A)		Net premium	400	
		Service tax 5%	20	
		The amount payable (rounded)	420	

Below the schedule, it is stated “in witness whereof this policy has been signed at 1500” . The 1st page contains the photo print of insurance stamp for one rupee with affixture of the companies round seal on the left-hand side signature of assistant administrative officer Jony G Thattil on the right-hand side. The 3rd page of Exhibit A8 is the receipt to its collection of Rs. 420/- on 13/9/2002. The breakup is shown as cash premium A/C-400 and service tax-20. The words “liability only”are seen typed above and below the words ‘service tax’. It is seen issued on 13.09.2002 and computer print taken on 13.09.2002 as seen from the 1st 2 pages.

12. Exhibit B1 begins with duplicate schedule on the left hand side on the top it is followed by policy number, name of insured address, period of insurance geographical, automobile Association membership followed by a table which is as follows:

registered number	Engine number	Chases number Year of mft	Year of mft	Type of body	CC	Seat / GVM	Net premium

This is followed by another table

IDV of vehicle	Non-electrical accessories	Electrical accessories	CNG unit	LPG unit	Total IDV

The scheduled in next page is as shown below:

schedule of premium				
		B. T. P-basic	175.00	
		Compulsory PA to owner-driver	50.00	
		Amount 100000		
		Gross (B)	225	
		Gross OD& TP	225	
		Loading on TP premium	175 .00	
Gross (A)		Net premium	400	
		Service tax 5%	20	
		The amount payable (rounded)	420	

Below the schedule it is stated as follows:

> "in witness whereof this policy has been signed at Thrissur on this **11th of November, 2003**"

(emphasis supplied)

The computer print is seen taken on 11.11.2003, as seen from the 1st two pages.

13. The schedule in Exhibit B1 excludes the PA to passenger while in exhibit A8 the breakup of payment is shown

as towards compulsory PA to passengers/owner-driver . Exhibit B1 was marked through RW1 who had issued the policy. In the cross examination RW1 admitted that premium was collected towards PA to passenger/owner-driver and that the terms 'passenger and owner-driver' are different. It was also admitted that a passenger on a motorcycle is pillion rider. He also admitted that Ext A8 and Exhibit X1 a are identical whereas the contents of Exhibit B1 and those of exhibit a 8 and X1 I were different. It was also admitted that Exhibit B1 did not contain the name, seal or signature of the person issued it. He deposed that the name and signature of the person issuing the policy will be shown when the policies issued. It was further deposed that the seal and signature will be visible in case the copy is of the original policy and that policies are issued when premium is paid on the basis of proposal. It was admitted that the policy was issued on 13.09. 2002 and Exhibit B1 was a computer-generated copy of the policy issued on 11.11. 2003. It was suggested that Exhibit B1 was produced before the court fabricating the original, in order to get absolved from the liability towards pillion rider.

14. The Tribunal below, taking note of the difference in the contents of exhibit B1 from exhibit A8, found that exhibit B1 is a fabricated 1 and hence discarded the same. Based on exhibit A 8 it was held that the policy covers the risk of pillion rider as the company has collected additional premium to passengers also.

15. On perusal of the documents Exhibit A8, Exhibit X1 series, Exhibit B1 and on analysis of the testimony of RW1, we are satisfied that the Tribunal has entered into the findings in the correct perspective. The learned Counsel for the appellant relied on the judgment dated 27.11.2013 of this Court in MACA No.938/2011 in support of his contention that the policy was act only policy. There this Court found that certain mistakes occurred in the computer generated policy as the entries happened to be given against columns different from the actual one. But in this case we have seen the difference in the contents in both the copies of the policies. The Insurance Company has produced a copy generated on a subsequent date with modified entries without the entry ‘passenger’. Moreover the testimony of

RW1 who issued the policy does not justify any genuineness in Ext B1 policy produced by them; but only proves the correctness of Ext A8/X1(a) to (C). Therefore we do not find any reason to interfere with the findings arrived at by the Tribunal.

Accordingly this appeal fails and we dismiss the same.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.V.ASHA
Judge

rtr/ /true copy/

P.S to Judge