IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

MACA.No. 1169 of 2014 ()

AGAINST THE AWARD IN OPMV 1973/2011 of M.A.C.T.,ERNAKULAM DATED

APPELLANT/3RD RESPONDENT:-

THE ORIENTAL INSURANCE COMPANY LIMITED
REPRESENTED BY ITS AUTHORISED SIGNATORY
THR ORIENTAL INSURANCE CO.LTD., REGIONAL OFFICE
ERNAKULAM, METRO PALACE, ERNAKULAM NORTH
KOCHI-18

BY ADV. SRI.A.R.GEORGE

RESPONDENTS/CLAIMANT & RESPONDENTS 1 & 2:-

1. C.G. WINSON @ VINCENT
S/O.C.C.GEORGE, CHULLIPARAMBIL VEEDU, JANATHA NORTH
MAMANGALAM, PALARIVATTOM PO, COCHIN-25

2. JAYANTHI
W/O.MURALEEDHAR, 48/23 MAROTTIKKAL HOUSE, ELAMAKKARA
COCHIN-26.

3. MITHUN MURALEEDHAR.M
S/O.MURALEEDHARA .M.N, 48/72 A
MAROTTIKKAL HOUSE KURUPPAMCHIRA LANE, ELAMAKKARA PO
KOCHI 26

R1 BY ADV. SRI.K.JANARDHANAN
R1 BY ADV. SRI.K.J.MANU RAJ
R2 & 3 BY ADV. SRI.K.V.SOHAN
R2 & 3 BY ADV. SMT.SREEJA SOHAN.K.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13-08-2015, THE COURT ON 13-08-2015 DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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M.A.C.A.No.1169 of 2014

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Dated this the 13th day of August, 2015.

J U D G M E N T

The insurer in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. The first respondent instituted the proceedings before the Tribunal alleging that he sustained injuries in the accident took place on 20.6.2011, involving a vehicle owned by the second respondent and ridden by the third respondent. The appellant was the insurer of the said vehicle. The appellant contested the proceedings mainly on the ground that the vehicle owned by the second respondent was not covered by a valid insurance policy at the time of accident. The Tribunal rejected the said contention of the appellant and passed an award permitting the first respondent to recover a sum of Rs.41,500/- by way of compensation from the appellant. The appellant is

aggrieved by the said decision of the Tribunal and hence this appeal.

3. Heard the learned counsel for the appellant and also the learned counsel for the respondents.

4. It is beyond dispute that the appellant had insured the vehicle involved in the accident for the period from 18.6.2010 to 17.6.2011. Ext.B1 is the policy issued by the appellant for the said period. Ext.B2 is another policy issued by the appellant for the said vehicle with effect from 00 hours on 21.6.2011 to the midnight of 20.6.2012. According to the appellant, since it is specifically stated in Ext.B2 policy that the same will take effect only from 00 hours on 21.6.2011, the risk of the claimant is not covered by the said policy. According to the claimant as also the owner of the vehicle, Ext.B2 policy was issued on the basis of a cheque issued by the owner of the vehicle on 20.6.2011 and since the accident took place at 5.30 p.m. on 20.6.2011, it has to be presumed that the cheque was received by the insurer prior to the accident during the day hours of 20.6.2011 itself and that the policy therefore covers the risk from the time of receipt of the cheque.

5. In ***New India Assurance Co. v. Bhagwati Devi*** (1998(6) SCC 534), the Apex Court held that in the absence of any specific time mentioned in the policy, the contract would be operative from the midnight of the day by operation of the provisions of the General Clauses Act, but, when a specific time with date is mentioned, then the insurance policy becomes effective only from that point of time. In ***J.Kalaivani v. K.Sivashankar*** [(2007)7 SCC 792), the Apex Court after reiterating the said proposition of law, held that it is the obligation of the court to look into the contract of the insurance to discern whether any particular time has been specified for commencement or expiry of the policy. Later, in ***National Insurance Co. Ltd. v. Sobina Iakai*** [(2007)7 SCC 786), referring to the decision in ***J.Kalaivani v. K.Sivashankar*** (supra), the Apex Court held that large number of cases are coming up before courts where insurance policies are taken immediately after the accident to get compensation in a clandestine manner and therefore in order to curb this widespread mischief, it is absolutely imperative to clearly hold that the effectiveness of the insurance policy would start from the

time and date specifically incorporated in the policy and not from an earlier point of time. In the light of the aforesaid judgments, I have no hesitation to hold that the effectiveness of the insurance policy would start only from the time and date specifically incorporated in the policy.

6. The learned counsel for the first respondent, relying on the decision of the Apex Court in ***National Insurance Company Limited v. Abhaysing Pratapsing Waghela and others*** (2008(4) KLT 657) contended that a distinction must be drawn between a contract of insurance which has been entered into for the purpose of giving effect to the object and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly in terms thereof. According to the learned counsel, in that limited sense, a contract of insurance entered into for the purpose of covering a third party risk would not be purely contractual and in so far as the liability of the insurance company which comes within the purview of Sections 146 and 147 of the Motor Vehicles Act, the same subserves a constitutional goal, namely, social justice and therefore, such policies must be viewed differently. According to

the learned counsel, since the insurer has collected the premium prior to the time of accident by way of a cheque, the terms of the policy are to be interpreted in such a way to cover the risk of the claimant. The aforesaid case was a case where an insurance policy was issued as against a cheque on 23.1.1995 and when the cheque was dishonoured, the payment was made in cash on 30.1.1995. The question arose was as to whether the policy of insurance covers the risk of the third parties in respect of an accident took place in the meanwhile on 27.1.1995. The Apex Court held that the insurance policy issued on 23.1.1995 would cover the risk of the third parties involved in the accident took place on 27.1.1995 notwithstanding the dishonour of the cheque. In the said case, it is clear that the accident took place after the effectiveness of the policy and the question considered was as to the consequence of the dishonour of the cheque after the accident. The said decision, may not, therefore, have any bearing on the facts of this case.

7. The learned counsel for the claimant relied on a decision of the Madras High Court in ***National Insurance Co. Ltd. v. Deivanai and others*** (2010 ACJ 1841) and contended

that in so far as the premium was paid by way of cheque on a day prior to the accident, the time of giving effect to the policy with effect from a day after the accident shall be ignored. True, in the case of a policy issued from 4.3.1992, the Madras High Court held that since the payment of premium was collected by way of cheque on 2.3.1992, the risk of third parties involved in the accident took place on 3.3.1992 is covered by the policy. The judgments of the Apex Court referred to by me are not seen referred to by the Madras High Court in the above mentioned case. In the circumstances, I prefer to follow the binding decisions of the Apex Court.

In the result, the appeal is allowed and the direction in the impugned award to the appellant to pay compensation to the claimant in the proceedings is vacated.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.