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 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

MACA.No. 1877 of 2011 ( )

AGAINST THE AWARD IN OP(M.V.) 1371/2003 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, THALASSERY DATED 16-07-2009

APPELLANT/3RD RESPONDENT:

THE NATIONAL INSURANCE CO.LTD.,
REPRESENTED BY ITS MANAGER, REGIONAL OFFICE, OMANA BUILDING
PADMA JUNCTION, KOCHI-35

BY ADV. SMT.RAJI T.BHASKAR

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 2 RESPECTIVELY:
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1. P.P. MUSTHAFA, AGED 28 YEARS
   S/O.LATE ASSU, PUTHIYAPURAYIL HOUSE
   PARIYARAM POST BAVODE, KANNUR DISTRICT

2. P.V.BASHEER
   S/O.IBRAHIM, KULATHUMALA DESOM PADUVILAYI
   POST ANJARAKANDY, KANNUR DISTRICT

3. KOLANGARAKANDY MUSTHAFA
   S/O.ABDUL KADER, AFSEENA MANZIL
   MAVILAYI AMSOM AND DESOM, KANNUR DISTRICT

4. SUPPL-R4 VARGHESE CHEMMANNOOR HOUSE
   KANIYARAM, MANANTHAVADY WAYANAD DISTRICT

R1 BY ADVS. SRI.P.M.PAREETH
SRI.MOHAMMED SHAMEEL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

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

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M.A.C.A.No.1877 of 2011

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Dated this the 4th day of August, 2015

<u>J U D G M E N T</u>

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

This appeal is filed by the Insurance Company against the award in O.P.(M.V.)No.1371/2003 on the file of the Motor Accidents Claims Tribunal, Thalassery.

2. We heard learned counsel for the appellant Smt. Raji T. Bhaskar and learned counsel for respondent No.1 Sri. P.M. Pareeth. There is no appearance for other respondents.

3. The injured was travelling as a pillion rider. The scooter driven by the 3rd respondent herein fell down and the appellant who was a pillion rider in the above scooter sustained serious injuries and consequently he claimed Rs.2,60,000/- as compensation. The Tribunal has assessed compensation under various heads and the total amount awarded is Rs.1,29,880/-.

4. In this appeal filed by the Insurance Company, the

appellant is disputing the liability under the policy, Ext.B1 which is an “act only” policy.

5. The learned counsel for the appellant submitted that the view taken by the Tribunal in paragraph 9 that there is an endorsement under Section II of the policy as extracted therein is not correct and the policy does not contain such a condition. It is also submitted that the Tribunal has wrongly relied upon the decision reported in **New India Assurance Company Ltd. v. Hydrose and Anr. 2008 (3) ILR 436**. It is submitted that the policy that was considered in the said decision is a package policy whereas herein it is only an act only policy. As far as the package policy is concerned, pillion rider will be covered.

6. The learned counsel for the first respondent submitted that the view taken by the Tribunal is perfectly justified.

7. As far as the disability of the claimant is concerned, Ext.X1, shows that he has got total permanent whole body physical disability of 11%. It is clear from the

certificate that the injured sustained crush injury right ankle joint, compound fracture dislocation of right ankle joint. The Medical Board on examination has found as follows:

> Partial ankylosis of right ankle joint limiting dossiplexon, plantar plexun and inversion and eversion of subtalar joint. Due to the above mentioned problems the person is having 11% total permanent, whole body physical disability assessed by Mc.Bride's scale.

8. What is emphasised by the learned counsel for the injured/claimant is that going by the schedule to the policy as against the column 'legal liability to passengers' Rs.50/- has been collected and hence the pillion rider is covered. Even in respect of an Act Policy the insurer Company is liable if additional premium is collected. There are other endorsements in the policy also.

9. Learned counsel for the Insurance Company explained that actually the endorsement just below the same is “50,000x2” and the amount collected is Rs.70/- that is for two passengers. But it is submitted that the policy is subject to IMT endorsement 64. The same is also printed

on the back cover of the policy and will have application. Learned counsel explained that only if the nature of injuries sustained by him are those described therein leading to disablement or death as the case may be the Company will be liable.

10. We find from the policy that the portion seen extracted in paragraph 9 of the judgment is not there. The same might have been adopted from any other policy of a similar nature. As far as the present policy is concerned, which is marked as Ext.B1 IMT 64 is having the heading “Accident to Unnamed Hirer/Driver/Pillion Passengers”. In the left hand side column 'description of benefits' and in the right hand side column 'Scale of compensation (percentage of the Capital sum insured as specified in the Schedule)' is given. The learned counsel submitted that going by clause 'b' therein for making a person eligible to claim 100% compensation the injuries should be of the nature specified therein. But as far as clause (b) (ii) is concerned, what is provided is the following:

> “Use to two hands or two feet or of one hand or one foot, or of such loss of sight of one eye and such loss of use of one hand or one foot”.

11. After going through the same and after hearing learned counsel on both sides, we are of the view that there should be a proper explanation from the appellant for the words 'such loss of use of one hand or one foot', and the scope of the same and the other clauses therein.

12. Learned counsel Sri. P.M. Pareeth submitted that as far as the present case is concerned, the appellant will be entitled for 100% compensation, which is disputed by the learned counsel for the Insurance Company. None of the officers of the Company have been examined to explain the terms and conditions. Learned counsel for the Insurance Company therefore sought for remand of the matter for fresh consideration and allow an opportunity to examine a competent officer of the Company.

13. It is evident that the policy is an act only policy but additional conditions are provided in the policy and the company has also collected additional premium. In that

view of the matter whether the injured will be covered by those terms will be the matter to be considered by the Tribunal. We therefore allow the appeal and set aside the findings in paragraph 9 of the award. We confirm the amount of compensation fixed by the Tribunal and only on the above aspect namely regarding the liability of the Insurance Company the matter will be reconsidered. The parties will appear on 7.9.2015 before the Tribunal. The claimant is also permitted to adduce fresh evidence to prove the nature of injuries and other details.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/