P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

M.A.C.A.No.2270 of 2013

Dated this the 21st day of December, 2015

JUDGMENT

Ramachandra Menon, J.

The injury sustained by the respondent herein in a road traffic accident occurred on 19.2.2007 involving a motor cycle bearing No.KL-01 AF 5608 insured by the appellant was sought to be compensated by filing a claim petition as OP(MV)No.221/2008 before the Motor Accident Claims Tribunal, Ernakulam. After analysing the pleadings and evidence, a total sum of ₹2,33,500/- was awarded by the Tribunal, which was directed to be satisfied by the appellant/insurer with interest at the rate of 8% per annum.

2. The appeal preferred by the Insurance Company is against the course pursued by the Tribunal in awarding a sum of ₹1,26,000/- towards medical expenses without any regard to the contention taken that the entire medical

expenses were reimbursed under a separate policy. The said claim mooted by the Insurance Company was rejected by the Tribunal placing reliance on the decision rendered by a learned Single Judge of this Court in **National Insurance Co. Ltd. v. Bijumon (2011 (2) KLT 20)** to the effect that, the reimbursement having obtained under a different policy, the same is not liable to be set off against a claim under the MV Act based on the policy issued to meet the statutory requirement.

3. Heard the learned counsel for the appellant as well as the learned counsel appearing for the claimant.

4. It is brought to the notice of this Court that the law declared by the Single bench in **National Insurance Co. Ltd. v. Bijumon (2011 (2) KLT 20)** has already been overruled by this Court as per the judgment dated 8.9.2015 in M.A.C.A.No.1623/2013, which has been reported in **National Insurance Co. Ltd. v. Akber Badsha (2015 (5)**

KHC 327) (to which, one of us was a member). This Court has categorically held that the Tribunal is bound to set off the amount obtained under the 'Mediclaim policy' or such other policies and the reckonable element has to be confined only to the 'premium' paid for obtaining such policy.

5. Coming to the factual position involved in this case, the learned counsel appearing for the appellant submits (after getting instructions) that two policies were issued by the company; out of which one was a road safety insurance for a sum of ₹1,00,000/-, wherein the sum assured was ₹1,00,000/- towards the personal accident. In respect of the other policy, it was a 'Mediclaim' policy for a value of ₹50,000/-. The premium collected in respect of the former policy is a sum of ₹185/-, whereas in the second case it is ₹1,055/-. Under the first policy, a sum of ₹1,00,000/- was disbursed and under the second policy,

reimbursement to the tune of ₹7,581/- was effected; thus disbursing a total sum of ₹1,07,581/-. The Tribunal has awarded a total sum of ₹1.26 lakhs towards the medical expenses and after deducting the sum of ₹1,07,581/- already effected under the other policies in respect of the same cause of action, the balance payable comes to **₹18,419/-**. By virtue of the law declared by this Court in **National Insurance Co. Ltd. v. Akber Badsha (2015 (5) KHC 327)** overruling the verdict passed by a learned Single Judge of this Court reported in **National Insurance Co. Ltd. v. Bijumon (2011 (2) KLT 20)**, the amount spent by the party for procuring the concerned mediclaim policy, i.e., the amount remitted as premium is liable to be satisfied by the insurance company. In the instant case, the premium satisfied under the two policies comes to (₹185+₹1,055)= **₹1,240/-**. The said amount requires to be added to the actual compensation to be paid to the tune of ₹18,419/-.

The figure comes to **₹19,615/-**. The aforesaid amount requires to be satisfied with interest @ 8% per annum. It is made clear that the award passed by the Tribunal stands modified to the said extent.

6. In view of the submission that the appellant has already effected a deposit of ₹2,50,000/- pursuant to the interim order passed by this Court on 13.3.2014, the balance amount shall be returned to the appellant immediately on producing a copy of this judgment.

The appeal stands allowed to the said extent. No order as to costs.

Sd/-
P.R.RAMACHANDRA MENON, JUDGE

Sd/-
ANIL K.NARENDRAN, JUDGE

skj

True copy

P.A to Judge

*The figure mentioned in the 2nd line of paragraph 6 in page 5 of the judgment dated 21/12/2015 in M.A.C.A.No.2270/2013 is corrected as **"Rs.1,50,000/-"** instead of **"Rs.2,50,000/-"** as per order dated 30/05/2019 in I.A.No.3945/2017 in M.A.C.A.No.2270/2013.*

Sd/-
Deputy Registrar