IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

**MACA.No. 2471 of 2015 ()**
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AGAINST THE AWARD IN OPMV 480/2008 of ADDL.D.C.& MACT,PATHANAMTHITTA DATED 28.02.2015

APPELLANT(S)/3RD RESPONDENT:
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THE BRANCH MANAGER
ICICI LOMBARD GENERAL INSURANCE CO.LTD., COCHIN
THROUGH THE LEGAL MANAGER
ICICI LOMBARDGENERAL INSURANCE CO.
KANNANKERY ESTATE, 3RDFLOOR, SHANMUGHAM ROAD
MARINE DRIVE, KOCHI -682 031.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT(S)/PETITIONER & RESPONDENTS 1, 2 & 4:
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1. SHERLY JOSE, AGED 48 YEARS
W/O.JOSE VARGHESE, MALAYIL HOUSE, VALANKARA
VENNIKKULAM P.O., PATHANAMTHITTA DISTRICT.689 672.

2. SUNIL
S/O.CHANDRAN, KULIKADAVUNKAL VEEDU
EDAKKULAM P.O, RANNI VILLAGE
PATHANAMTHITTA DISTRICT. 689 672.

3. E.C.ABRAHAM
ETTIMURUTHEL HOUSE, PAZHAVANGADI P.O., RANNI
PATHANAMTHITTA DISTRICT. 689 672.

4. SHAJI PANAVELI
PANAVELI HOUSE, RANNI P.O.
PATHANAMTHITTA DISTRICT. 689 672.

R1 BY ADV. SRI.A.N.SANTHOSH
R3 BY ADV. SRI.T.K.BIJU (MANJINIKARA)
R3 BY ADV. SMT.ANNIE M.ABRAHAM
R4 BY ADV. SRI.T.K.KOSHY
R4 BY ADV. SRI.SABU I.KOSHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 16-11-2015, ALONG WITH MACA. 2472/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON**
**&**
**ANIL K. NARENDRAN, JJ.**
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M.A.C.A. Nos. 2471 and 2472
of 2015
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Dated, this the 16th day of November, 2015

**JUDGMENT**

Ramachandra Menon, J.

These appeals have been filed by the insurer of the vehicle bearing No. **KL06 6696** being aggrieved of the direction given by the Tribunal to satisfy the Award passed in O.P.(MV) Nos. 480 and 482 of 2015 towards the compensation for the injuries sustained by the claimants, with liberty to have the same recovered from the insured. The crux of the case put forth by the appellant is that the policy issued in favour of the insured was already cancelled for want of premium and the position was intimated to the insured as well as the concerned RTO. This aspect was not properly considered by the Tribunal and hence the challenge.

2. The claimants were husband and wife, who were proceeding on the scooter bearing No. **KL 03 J 1449** on 06.01.2008, when they

were knocked down by the bus bearing No. **KL 06 6696**, owned and driven by the respondents 2 and 3 respectively, and insured with the appellant, causing serious injuries. This was sought to be compensated by filing separate claim petitions before the Tribunal, which were considered together. The specific contention raised by the appellant was that the premium was satisfied by way of cheque, which came to be dishonoured for want of sufficiency of funds, upon which the policy was cancelled and the same was let known to the insured and also to the RTO. The Tribunal proceeded further, with reference to the evidence let in, both documentary and oral, consisting of Exts. A1 to A23 documents, Exts. B1 to B8 documents and depositions of RW1 to RW6. On culmination of the trial, the Tribunal found that the accident was only because of the negligence on the part of the driver of the bus and the liability was sought to be fixed accordingly.

3. Considering the nature and extent of injuries and the consequences resulted, a sum of Rs.3,09,268/- has been awarded in O.P.(M.V) No.480 of 2008 and a sum of Rs.13,63,604/- has been awarded in of O.P.(M.V.) No.482of 2008, which were directed to be satisfied with interest @ 9% p.a. from the date of the

petition. Observing that cancellation of the policy as per Exts. B1, B2 and B7 was not intimated to the RTO and the Police, the liability was fixed upon the shoulders of the Insurance Company, although with liberty to have the same recovered after satisfying the compensation. This made the appellant Insurance Company to feel aggrieved and hence the appeals.

4. Heard the learned counsel for the appellant Insurance Company, the learned counsel for the claimants and the learned counsel for the second respondent/registered owner of the vehicle.

5. During the course of hearing, the learned counsel for the appellant points out that the first respondent, who was the driver of the vehicle, was set as ex-parte before the Tribunal and the second respondent took up a contention that he had transferred the vehicle to another person, who was subsequently impleaded in the party array as the 4th respondent. The appellant Insurance Company issued Ext. A8 cover note for the period from 03.10.2007 to 02.10.2008 on the strength of the premium remitted by way of 'cheque' dated 04.09.2007. But the cheque was dishonoured for want of sufficiency of funds, upon which the matter was intimated to the insured, who chose to issue another cheque dated

03.10.2007. This time also the cheque was dishonoured and it was in the said circumstance, that the policy was cancelled on 31.10.2007 and the position was intimated to the insured and the RTO under 'certificate of posting', as evident from Exts. B1, B2 and B7. The appellant had also issued Ext. B8 communication to the second respondent/registered owner on 19.09.2007, i.e. on the very same day on which Ext.B7 was issued, and to the Regional Transport Officer.

6. The manager of the appellant insurance company was examined as RW1. RW2 is the registered owner of the vehicle, i.e. the second respondent, who in turn has accepted receipt of the intimation given by the appellant Insurance Company. This being the position, it is contended that it could have been reasonably presumed by the Tribunal, that the intimation sent by the appellant has been served upon the RTO as well, and as such the adverse finding that the position was not proved by the appellant is not correct or sustainable. The learned counsel also points out that, by virtue of the ruling rendered by a Division Bench of this Court in **Oriental Insurance Co. Ltd. Vs. Raveendran M.V. and Others [2015 (4) KHC 397 (DB)],** intimation to the police upon

cancellation of policy on dishonour of cheque issued towards the premium is not necessary and as such, the Tribunal is not justified in directing the appellant Insurance Company to satisfy the liability at the first instance, for the reason that no intimation was served to the police.

7. The legal position has been discussed by the Tribunal in paragraph 12 of the Award with reference to the verdict rendered by the Apex Court in **Inderjit Kaur's** case reported in **(1998) 1 SCC 371, Deddappa's** case reported in **2008 (1) KLT 296 (SC), Laxamia** case reported in **(2012) 5 SCC 234** and also **Wilson's** case reported in **2013 (3) KHC 764.** There cannot be dispute with regard to the fact that policy can be issued only on receipt of premium as envisaged under Section 64 (VB) of the Insurance Act. But it is always open for the Insurance Company to accept premium either by way of 'Cash', 'Demand Draft' or 'Cheque'. The appellant/insurance company in the instant case decided to obtain premium by way of 'cheque' and issued the cover note. Having received the premium by way of cheque and having issued policy in this regard, if the cheque came to be dishonoured for want of sufficiency of funds or such other reasons, the policy could be

cancelled and the position had to be intimated to the insured and also to the RTO**.** Unless and until the process is completed, serving intimation to the insured and the concerned RTO, the Policy will be valid till such date and once the process is completed, no liability can be fastened upon the shoulders of the Insurance Company.

8. Coming to the case in hand, the question is whether the duty cast upon the insurer is completely discharged. The policy was cancelled on 31.10.2007 and the position was intimated to the insured, as put forth by the appellant, besides communicating to the RTO as well. Admittedly, such intimation was given only by way of 'certificate of posting'. The 'certificate of positing' issued by the authorities of the postal department is of course a piece of evidence to hold that intimation was <u>sent</u>. But the same is not a proof so as to infer that the said communication was <u>served/ received</u> at the other end i.e. to the addressee. The burden is upon the insurance company, who seeks to plead the fact, and as such, it was obligatory for the Insurance Company to have established that the intimation <u>was duly served to the insured as well as to the RTO</u>. This has not been satisfied, in so far as the

Insurance Company has not produced any document as to the service of notice of cancellation to the RTO.

9. Yet another contention raised by the learned counsel for the appellant is that the quantum of compensation awarded by the Tribunal in respect of the claimant in O.P.(MV) No. 480 of 2008 (wife of the claimant in the other case) is not at all correct. It is stated that the alleged employment is a fictitious one, in so far as the appellant was stated as working in the shop/establishment of the husband and that Ext. A9 certificate issued to this effect was by 'Vyapari Vyavasai Ekopana Samithi', which cannot be relied on. Though such a contention is raised, the factual position is not sought to be established before the Tribunal. Even otherwise, we do not find it necessary to go into such minute aspects conducting a microscopic analysis. The main point of challenge in this case is with regard to the liability fixed upon the insurance company with reference to the dishonour of cheque. We find that interference is not possible by virtue of the position of law made clear by the Apex Court and also by this Court.

In the said circumstances, appeals stand dismissed, without prejudice to the rights and liberties of the appellant to proceed against the concerned respondent and his properties after satisfying the liability towards the claimants.

Sd/
**P. R. RAMACHANDRA MENON, JUDGE**

Sd/-
**ANIL K. NARENDRAN, JUDGE**

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