IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

MACA.No. 2587 of 2015 ()

(AGAINST THE AWARD IN OPMV 737/2010 of MACT VADAKARA DATED 28-04-2015)

APPELLANT(S)/3RD RESPONDENT:

ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED
NOW REPRESENTED BY THEIR ZONAL HEAD
SUBRAMANIAM BUILDING, CLUB HOUSE ROAD, ANNASALAI
CHENNAI-600 002.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONER & 1ST RESPONDENT.:
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1. SACHIN R.NAIR
S/O.SOBHA R.NAIR, THAZHA PUTHUKUDY HOUSE, EDAKKULAM PO
KOYILANDY TALUK, PIN-673 306.

2. SREENI
S/O.ANDI, MUTHALAMADAPURAYIL HOUSE, ALKKARAPADI POST
MALAPPURAM, PIN-673 638.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 29-10-2015, 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.No.2587 OF 2015

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Dated this the 29th October, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

This appeal has been filed by the Insurance Company being aggrieved of the award dated 28.04.2015 in O.P.(MV)No.737 of 2010 on the file of the M.A.C.T., Vatakara, granting a total compensation of Rs.1058000/- with interest at the rate of 9% per annum in respect of the injuries sustained by the first respondent.

2. The main contention is that the cheque issued by the insured , i.e. the second respondent was dishonoured for want of funds and in the said circumstance, the policy was cancelled, which was communicated to the insured by registered post, also forwarding a copy to the authorities of the Motor Vehicles Department and hence there cannot be any liability to the insurer.

3. The sequence of events narrated in the appeal shows

that the claimant, while proceeding along the road, was knocked down by a tipper lorry bearing No.KL.10/AC-7980, owned and driven by the second respondent . This led to the claim petition, wherein a contention was taken by the insurer that no liability could be fastened on the shoulders of the Insurance Company for cancellation of the policy as aforesaid. The evidence adduced before the Tribunal consists of deposition of the claimant as P.W.1, documents produced as Exts.A1 to A11 from the part of the claimant, Exts.B1 to B5 from the part of the respondents and Ext.C1 disability certificate issued by the Medical College Hospital, Kozhikode, marked as Court exhibit. After evaluation of the facts and circumstances, the Tribunal arrived at a finding that the accident was solely because of negligence on the part of the owner-cum-driver, i.e. the second respondent and liability was fixed accordingly. After considering the pleadings and materials on record, amounts were awarded under different heads granting total compensation of Rs.1057523/-, which was directed to be satisfied with interest at the rate of 9% per annum. However, in view of cancellation of the policy, the

Tribunal, placing reliance on the verdict passed by this Court in **<u>2013(4)KLT SN 121 (Wilson vs. Vasantha Kumar),</u>** granted right of recovery to the insurer from the owner of the vehicle. This is sought to be challenged in this appeal filed by the insurer contending that in the absence of any liability to pay, the question of pay and recovery does not arise.

4. Heard Mr. Mathews Jacob, the learned Senior Counsel on behalf of the appellant in detail.

5. The main grounds raised by the appellant as discernible from Grounds 'C' and 'E' are that, cancellation of policy was intimated to the insured by registered post and that a letter was sent to the RTO in this regard. Reliance is sought to be placed on Section 64 -VB of the Insurance Act as well, to the effect that the risk would commence only from payment of premium and not otherwise.

6. Coming to the factual position, the accident occurred was on 05.05.2010 and the policy, for want of premium was cancelled on dishonour of cheque and the same was communicated to the insured only subsequently as per Annexure

-A letter dated 28.05.2010 (produced along with I.A.No.3749 of 2015), which by itself shows that cancellation of policy was effected much after the accident and that policy was in existence on the date of the accident. It is also relevant to note that copy of Annexure- A communication has been marked to the 'Transport Commissioner' and not to the RTO as contended by the appellant in Ground 'C', which by itself is not sufficient to accept the contention that the position was duly intimated to the authorities of the Motor Vehicles Department as well, in so far as there is no case for the appellant that it was served to the competent authority/concerned authority, who granted registration under the M.V. Act. There is no case that such communication was sent by registered post to the Transport Commissioner. It is true that there is an entry in Annexure B extract of record issued by the Department of Posts that some communication was sent to the RTO, Kakkanad as well vide entry No.H.2281. But no copy is seen marked in 'Annexure A' communication to the RTO. In any view of the matter, the cancellation of the policy, admittedly being after the accident, it is of no consequence.

7. Coming to the legal position, the issue had come up for consideration before the Apex Court as to the course of action to be pursued in the said circumstance. The main contention mooted before the Apex Court was with regard to non-satisfaction of ingredients of **Section 64-VB of the Insurance Act.** There is no dispute with regard to the fact that the risk would commence only on payment of premium. But it is for the Insurance Company to decide, how the premium has to be accepted ; whether it be by way of 'Cash', 'Demand Draft' or by way of 'Cheque'. Once such consideration is accepted and the Insurance Company takes a decision to issue policy, that is the end of the matter to have validity for the policy for the period in question, unless the same is cancelled and communicated to the insured and authorities of the RTO. The scope was explained by the Supreme Court in this regard as per the decision reported in **2008(1) KLT 296** (***Deddappa vs. National Insurance Company Ltd.***). The matter was further considered by a Division Bench of this Court as well **2013 (4) KLT SN. 121***(cited*

supra) .

In the above circumstance, we find that the contention raised by the Company is not liable to be entertained; more so when the right of recovery has already been given to the appellant/insurer. The appeal fails and the same stands dismissed.

P.R. RAMACHANDRA MENON,
JUDGE

ANIL K. NARENDRAN,
JUDGE

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