IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

MACA.No. 2446 of 2013 ()

JUDGMENT AND AWARD IN OPMV 978/2012 of M.A.C.T.,ERNAKULAM
DATED 15-05-2013

APPELLANT/3RD RESPONDENT:

M/S. SHRIRAM GENERAL INSURANCE COMPANY LTD.
AZAD TOWER, AMMAN COVIL CROSS ROAD, ERNAKULAM
KOCHI 682 013, REP.BY THE AUTHORISED SIGNATORY
SHRIRAM , GENERAL INSURANCE COMPANY LTD., HEAD OFFICE
JAIPUR, RAJASTHAN

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENT/CLAIMANT:

K.C. YACOOB., AGED 68 YEARS
S/O.MUHAMMED MOHIDEEN, TSRA 4 (44/3452)
DESHABHIMANI ROAD, TAGORE STREET,
kaloor, ERNAKULAM
KOCHI 682 017.

BY ADV. SRI.K.JANARDHANAN
ADV. SRI.K.J.MANU RAJ
ADV. SMT.P.C.JEEVA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN MACA.2446/2013

APPELLANTS' ANNEXURES: NIL

<u>RESPONDENTS' ANNEXURES:</u>

ANNEXURE -1:	COPY OF EXT.P15 CANCOMFORT INSURANCE CERTIFICATE No.70300/2011-2012/01151/11 OF UNITED INDIA INSURANCE COMPANY LTD.
ANNEXURE – II:	COPY OF EXT.A16 CERTIFICATE DT.17.4.2013 REGARDING REIMBURSEMENT ISSUED BY THIRD PARTY ADMINISTRATOR E – MEDITEK.

TRUE COPY

P.S.TO JUDGE

dsn

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

M.A.C.A.No.2446 OF 2013

DATED THIS THE 4th DAY OF NOVEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

The injuries sustained by the respondent herein in a road traffic accident occurred on 2.1.2012 involving a stage carriage bearing No. KL 7 AR 5089 insured by the appellant was sought to be compensated by filing a claim petition as OP(MV)No.978/2012 before the Motor Accident Claims Tribunal, Ernakulam. After analysing the pleadings and evidence, a total sum of ₹1,05,200/- 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 cause pursued by the Tribunal in awarding a sum of ₹54,000/- 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 a different policy to meet the statutory requirement.

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

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) 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. In the instant case, the learned counsel for the claimant submits that the premium satisfied was ₹1,33,308/- as revealed from Annexure-1 produced by the Appellant insurance Company along with I.A.No.3745/2015. But the learned counsel for the Insurance Company submits that the premium of ₹1,33,308/- was for the entire family whereas the premium in respect of the claimant was only ₹9,254/-. Further, the amount satisfied by the insurance Company as

revealed from Annexure 2 dated 17.4.2013 is ₹52,583/-. In the said circumstances, the balance payable to the claimant after giving credit to the sum of ₹52,583/- against medical expenses is ₹10,671/- [i.e., (54000-52,583)+9,254]. The award stands modified to the said extent.

5. When the matter had come up for consideration before this Court on 24.2.2014, interim stay was granted except for an amount of ₹51,200/-. The learned counsel for the claimant submits that no deposit has been made by the Appellant Company with regard to interest payable. This Court makes it clear that the entire balance amount, subject to the modification ordered as mentioned above, shall be cleared by the Insurance Company within one month from the date of receipt of a copy of this judgment.

Appeal is disposed of as above.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRAN,
JUDGE

dsn

True copy

P.S.to Judge