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 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

MACA.No. 855 of 2010 ( )

AGAINST THE AWARD IN OPMV 2466/2002 of MACT,TSR DATED 27-02-2009
APPELLANT(S)/2ND RESPONDENT:

UNITED INDIA INSURANCE CO. LTD.,
OTTAPALAM, REPRESENTED BY THE ASSISTANT MANAGER
UNITED INDIA INSURANCE CO. LTD., REGIONAL OFFICE
ERNAKULAM, SARANYA, HOSPITAL ROAD
KOCHI -11.

BY ADV. SRI.A.R.GEORGE

RESPONDENT(S)/CLAIMANT AND IST RESPONDENT:
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1. VIJAYAKUMAR, S/O. PARANGODAN,
PARIYATHRA HOUSE, MANNANUR.P.O, VELLIYAD
OTTAPALAM, NOW RESIDING AT, C/O. SIVARAMAN
KALLARAPATTU HOUSE, P.O. POOMALA, VEDIPPARA
THRISSUR DISTRICT.

2. A. GOPINATHAN, S/O. APPUKUTTAN,
ATHIPATTA HOUSE, VII/29, MANNANNUR.P.O
VIA KAVALAPPARA, PALAKKAD.

R1 BY ADV. SRI.P.V.CHANDRA MOHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.
- -
M.A.C.A.No.855 of 2010
- -
Dated this the 9th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

The only question that is raised in this appeal is regarding the liability of the insurance company. The vehicle involved is a motor cycle bearing Reg. No.KL-9G/503 and the accident was on 11.1.2002 at 9.15 p.m. The injured was the pillion rider. Before the Tribunal, the insurance company contended, inter-alia, that the said respondent is not liable as the policy issued will not cover the risk of pillion rider. But they did not produce the copy of the policy before the Tribunal and therefore, the Tribunal, in paragraph 11 of the award, found that mere averment in the written statement is not sufficient to accept the contentions of the second respondent and ultimately the insurer was also found jointly and severally liable.

2. In this appeal, the insurance company has produced the copy of the policy and it is having the caption “act only”. According to the

learned counsel for the appellant/insurance company, being an “act only” policy, the pillion rider is not covered.

3. Learned counsel for the claimant mainly contended that for accepting additional evidence by this Court, there should have been proper averments which are not there. It is also contended that the terms of the policy are matters within the special knowledge of the parties and therefore policy should have been produced and the conditions should have been explained.

4. The second respondent, the owner of the vehicle, is not appearing before this Court. Therefore, only if proper opportunity is afforded to both sides, it will be possible to take a decision in the matter. The safe course to be adopted will be to remand the matter with a direction to the Tribunal to hear and dispose of the matter afresh.

5. We confirm the award as regards the quantum of compensation and remand the matter only to consider the liability of the insurance company to satisfy the award. An appropriate decision will be taken after hearing the claimant, the owner of the vehicle and the insurance company. We direct the Tribunal to expedite the trial also.

6. It is submitted by the learned counsel for the insurance company that before filing appeal, an amount of Rs.25,000/- has been deposited before the Tribunal as per receipt dated 4.12.2009. It is prayed that if ultimately the company is found not liable, the said amount may be refunded to the appellant. Appropriate orders with regard to the above also will be passed by the Tribunal while disposing of the matter.

The appeal is allowed as above. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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