IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

MACA.No. 1170 of 2010 ( )

AGAINST THE AWARD IN OPMV 1229/2003 of MACT, IRINJALAKUDA

APPELLANT(S)/PETITIONER:

BIJU,S/O.MATHEW,
EZHAPARAMBIL HOUSE, AMBANOLY DESOM,
VELLIKULANGARA VILLAGE & PO,
MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENT(S)/RESPONDENTS IN OPMV:

1. WILSON P.L, S/O.LONAPPAN,
   PULLOKKARAN HOUSE, CHAIPINKUZHY, P.O.VEERANCHIRA.

2. SIJO,S/O.KOCHAPPAN, (DELETED)
   MORELY HOUSE, THOOMPAKKODE, PARIYARAM.

3. THE ORIENTAL INSURANCE CO.LTD.,
   SOUTH JUNCTION, CHALAKUDY.

RESPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER THE ORDER DATED 09.07.2014 IN I.A. NO. 1921/2014 IN MACA NO. 1170/2010.

R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R3 BY ADV. SRI.P.JACOB MATHEW
R3 BY ADV. SMT.T.A.LUXY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

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M.A.C.A. No. 1170 of 2010

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Dated this the 2nd day of June, 2015.

JUDGMENT

In this second round of litigation by the claimant, the short question that arises for consideration is whether the Motor Accidents Claims Tribunal was justified in holding that the Insurance Company is not liable for the amount awarded as the policy does not cover the situation available in the case.

2. That an accident occurred on 12.5.2003 and that the claimant suffered injuries and also that he had undergone treatment are not matters in dispute. There is also no dispute that the quantum of compensation awarded was Rs.50,850/-.

3. It may be useful here to refer to the earlier round of litigation. In the earlier round of litigation, it seems that the claimant was dissatisfied with the quantum of compensation granted and so also about exonerating the Insurance

Company from liability. He came up before this Court in M.A.C.A. 2775 of 2008 which was disposed of by order dated 6.10.2009. This Court found that the quantum of compensation granted is inadequate and directed recomputation. As regards the liability of the Insurance Company, though the Tribunal accepted the plea of the Insurance Company that policy does not cover the pillion rider, this Court was skeptical about the same in view of the fact that this Court found an entry in the policy as CSI=1,34,000/- for 3. Taking note of that fact, in paragraph 2 of the earlier order, this court observed as follows:

> "A policy copy is made available before me for consideration and I find CSI of Rs.1,34,000/- for 3. When premium is collected by the company, who are these three persons and under shat conditions those three persons are entitled to be indemnified are all matters which the insurance company should have explained before the Tribunal. The observation of the Motor Accidents Claims Tribunal that

> no additional premium is paid does not appear to be correct in the light of this entry. So, it requires consideration at the hands of the Tribunal.”

Observing so, this court set aside the award passed by the Tribunal and directed the Tribunal to decide the matter afresh and also to reconsider the question as to whether the policy covers the pillion rider also. This Court permitted the Insurance Company to adduce further evidence in support of the contention that the policy does not cover the pillion rider.

4. After the matter had gone back, no further evidence was adduced by either side.

5. However, the Tribunal found that the quantum granted is inadequate and after quantifying under various heads came to the conclusion that the petitioner is entitled to Rs.50,850/-.

6. As regards the question whether the policy covers pillion rider, inconsistent views

were taken by the Tribunal. In one place the Tribunal says that it is only an act policy and it does not cover pillion rider, in another place it was held that even assuming that pillion rider is covered under Personal Accident Cover for Owner-Driver, the clause noticed by this Court in the earlier order, in order to come under that category, the injuries specified therein will have to be suffered by the claimant. Since he has not suffered any of the enumerated injuries, he is not covered by the policy. Thus while granting the compensation Insurance Company stood exonerated. It is this exoneration of the Company which is assailed in this appeal.

7. Learned counsel appearing for the appellant pointed out that this Court in its remand order had directed the Insurance Company to explain the specific terms and conditions of the policy made mention of and whom it covers. No evidence whatsoever was adduced by the Insurance Company.

The Tribunal was not justified in holding that even assuming that the pillion rider is to be covered by Personal Accident Cover for Owner-Driver clause, the person has to suffer one of the injuries specified. Since there was no evidence adduced by the Insurance Company to show that pillion rider is not covered by the policy, it has to be taken that the policy covers the pillion rider also.

8. The above contention is stoutly resisted by the learned counsel appearing for the Insurance Company who points out that the policy is an act policy and it is trite that act policy does not cover pillion rider. Learned counsel was fair enough to say that the Insurance Company ought to have adduced further evidence in the matter, but the learned counsel contended that discussion of the issue by the Tribunal would indicate that the terms and conditions in all probability must have been produced.

9. Referring to paragraph 8 of the present order, it was pointed out by the learned counsel that in all probability the terms and conditions must have been produced otherwise the court below would not have passed an order of the present nature. Learned counsel went on to point out that even assuming that the Personal Accident Cover for Owner-Driver mentioned in the policy covers a pillion rider, he will have to suffer one of the enumerated injuries to get coverage of the policy. Since he has not suffered any of the injuries, he is not covered.

10. The argument advanced by the Insurance Company has no substance. Obviously, the interpretation given to the entry Personal Accident Cover for Owner-Driver in the given instance in the terms and conditions, it is very clear that it is only an owner, driver and an additional driver who are covered and further this Court while considering matters on the earlier

occasion, was doubtful about the entry and provided an opportunity to the Insurance Company to explain the claim and also to make its decision clear regarding the coverage of the policy.

11. It may be noted here that though the initial written statement filed by the Insurance Company did not mention that the policy did not cover the pillion rider, by way of an amendment brought in that point and it is contended that it is an act policy and does not cover pillion rider. It was that issue that was gone into by this Court on the earlier occasion. This Court found that in the light of the entry '3' in the policy, it does not readily accepted that the pillion rider is not covered by the policy. Therefore, the Insurance Company was given an opportunity to explain.

12. It is difficult to accept the contention of the learned counsel for the Insurance Company that the entry referred to by this Court on the earlier occasion means that even assuming that

the policy covers the pillion rider, he has to suffer one of the injuries mentioned.

13. If it is an act policy, it does not cover a pillion rider. Under such circumstances, that contention cannot be accepted. Then the question remains as to what is the figure '3' stands for. The obligation was on the Insurance Company to explain as to what that figure stands for and establish by adducing for further evidence that it does not cover a pillion rider. It is not a matter for ready inference. Additional premium has been collected for three persons. As already stated, pillion rider could not be brought under Personal Accident Cover for Owner-Driver category and necessarily it had to be found that third person stands outside the scope and ambit of the policy, it was for the Insurance Company to explain. Since there is no evidence adduced by the Insurance Company, necessarily, they will have to face the consequences also.

14. This Court is satisfied that by the earlier remand order the Insurance Company was bound to explain the entries in the policy by adducing evidence. No evidence was adduced by the Insurance Company.

Therefore, this appeal is allowed and that part of the award exonerating the Insurance Company is set aside and it is mentioned that the amount awarded shall be paid by the Insurance Company.

P. BHAVADASAN,
JUDGE

sb.