IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

MACA.No. 3214 of 2015 ()

AGAINST THE AWARD IN OPMV 956/2012 of MOTOR ACCIDENT CLAIMS TRIBUNAL -III/ ADDL. DISTRICT JUDGE - IV, KOZHIKODE DATED 17-07-2015

APPELLANT/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 & IST RESPONDENT:
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1. P.K. PREMA
W/O.SREEDHARAN, KODUVAYIL KUNI HOUSE, MOODADI P.O.
KOYILANDY TALUK, KOZHIKODEDISTRICT - 673 307.

2. K.M.ACHUTHAN
S/O.KANARAN, KOKKANCHALIL MEETHAL HOUSE,
KOLATHUR P.O., MEPPAYYUR, KOYILANDY TALUK
KOZHIKODE DISTRICT PIN - 673 307.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.3214 OF 2015

DATED THIS THE 20th DAY OF NOVEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

This appeal has been preferred by the Insurance Company being aggrieved by the verdict passed by the Tribunal mulcting the entire liability to an extent of ₹93,000/-to be satisfied by the appellant/insurer in respect of the injuries sustained by the claimant in a road traffic accident occurred on 24.9.2012. The case of the claimant before the Tribunal was that she was travelling in the bus bearing No.KL-56A-8181 owned, driven and insured by respondents 1 to 3 respectively before the Tribunal. While so, because of the negligent driving of the bus, the door of the bus was opened and the claimant was thrown out, causing serious injuries which was sought to be compensated by filing a claim petition.

2. The owner and driver of the bus did not choose to appear before the Tribunal. The matter was contested by the appellant/insurer stating that, though a policy was issued in favour of the insured, based on the premium obtained as per Cheque No.951021 dated 22.12.2011, the said cheque came to be dishonoured on presentation for want of sufficiency of funds. In the

said circumstances, the policy was cancelled and the position was intimated to the insured as per letter dated 12.1.2012 sent by registered post, also marking a copy to the Transport Commissioner. The evidence adduced before the Tribunal consists of the documents produced and marked on the part of the claimant as Exts.A1 to A10, whereas no document was produced on the part of the Insurance Company, nor did the Insurance Company choose to examine anybody in support of their contentions. Based on the available materials on record, the Tribunal held that the accident was only because of the negligence on the part of the driver of the bus. Based on the facts and figures pleaded and sought to be established, compensation was awarded under different heads granting a total sum of ₹92,428.32(rounded off to ₹93,000/-) which was directed to be satisfied with interest @ 9% p.a. from the date of petition, till satisfaction. Since the appellant Insurance Company did not adduce any evidence with regard to the cancellation of the policy and communication of the same to the party and also to the Registering Authority, the Tribunal found that the liability was to be satisfied by the insurer. This in turn is challenged in this appeal preferred by the Insurance Company.

3. Heard Sri Mathews Jacob, the learned Senior Counsel for the appellant. It is stated during the course of arguments that the Insurance Company could not produce documents before the Tribunal as the relevant documents were produced in some other cases pending before some other Tribunal in connection with a different cause of action. We are not inclined to accept the said submission, obviously for the reason that certified copies of documents could have been produced in support of the contention. Even otherwise, the appellant could have procured the relevant documents/copies and the same could have been produced along with the appeal by availing the course provided under Order XLI Rule 27 CPC, which has not been pursued by the appellant. Going by the pleadings set forth in the memorandum of appeal, in particular, as given in paragraph No.2 of the appeal memorandum, what is stated therein is that the cheque was dishonoured as the funds were insufficient on 11.1.2012 and on the very next day, the appellant sent a registered letter to the 2nd respondent with copy to the 'Transport Commissioner' cancelling the policy. Even if it is presumed that the position was let known

to the insured, marking of a copy to the 'Transport Commissioner' is not enough to avoid the liability as against a third party. The position should have been intimated to the concerned Registering Authority in view of the law declared by the Apex Court in **Deddappa** v. **National Insurance Co. Ltd.** (**2008 (1) KLT 296).**

In the above circumstances, this Court finds that there is absolutely no merit or bona fides in the appeal. Interference is declined and the appeal is dismissed. However, it is made clear that dismissal of the appeal as against the rights of third party (claimant before the Tribunal) will not bar the way of the appellant in proceeding against the insured/owner of the vehicle, if the policy was cancelled and the position was intimated to him before the accident and the defect/lapse was not rectified by the insured by satisfying the premium on time.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRAN,
JUDGE

dsn

True copy

P.S.to Judge