IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

O.P.(MAC).No.3137 of 2011 (O)

AGAINST THE AWARD IN OP(MV) NO.1478/2007 DATED 29.03.2011
OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM.

PETITIONER(S):-

CHOLAMANDALAM MS GENERAL INSURANCE COMPANY LIMITED,
NOW REPRESENTED BY ITS MANAGER-CLAIMS,
ACEL ESTATE, CHITTOOR ROAD, KOCHI-11

BY ADVS.SRI.MATHEWS JACOB (SENIOR ADVOCATE)
SRI.P.JACOB MATHEW

RESPONDENT(S):-

----

1. OMANA BABU,
   PERUMPUZHA P.O, KOLLAM - 691 001.

2. RAHIM, VIII/723,
   MULLUVILA, KANNANALLOOR P.O, ADICHANALLOOR
   KOLLAM - 691 001.

3. THE NEW INDIA ASSURANCE COMPANY LIMITED,
   REPRESENTED BY ITS DIVISIONAL MANAGER, KOLLAM - 691 001.

R2 BY ADVS. SRI.A.MUHAMMED RAFFI
SRI. K.SIJU
R3 BY ADV.SMT.T.C.SOWMIAVAVATHY.

THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 05-03-2015, ALONG WITH O.P.(MAC).NO.3138 OF 2011-O, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.(MAC).3137 OF 2011

APPENDIX

PETITIONER(S) EXHIBITS:-

EXT.P1-	TRUE COPY OF THE COMMON AWARD DATED 29.03.2011 IN O.P (MV).802 OF 2007 BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM.
EXT.P2-	TRUE COPY OF THE CHEQUE NO.465274 DTD.27.03.2007 ISSUED BY THE 2ND RESPONDENT DRAWN ON SBT, CHATHANNOOR.
EXT.P2(A)-	TRUE COPY OF THE CHEQUE NO. 465276 DTD.27.03.2007 ISSUED BY THE 2ND RESPONDENT DRAWN ON SBT, CHATHANNOOR.
EXT.P3-	TRUE COPY OF THE RETURNED CHEQUE REMITTANCE MEMO DTD. 05.05.2007 OF THE SBT, CHATHANOOR.
EXT.P3(A)-	TRUE COPY OF THE RETURNED CHEQUE REMITTANCE MEMO DTD.05.05.2007 OF THE SBT, CHATHANNOOR.

RESPONDENTS' EXHIBITS:-
-------------------------------------- NIL.

Vku/- [true copy]

K. Vinod Chandran, J.

O.P(MAC) Nos.3137 of 2011-O & 3138 of 2011-O

Dated this the 05th day of March, 2015

JUDGMENT

In both the Original Petitions identical issue arises, as to the liability cast on the petitioner and the 3rd respondent proportionately, with respect to the award amounts. Two claim petitions were filed by two injured, numbered as O.P.(MV).802 of 2007 and 1478 of 2007; as against an accident in which the vehicle of the 2nd respondent, one Rahim, was involved. The 3rd respondent in the respective Original Petitions, is the other Insurance Company, impleaded later on, before the Tribunal.

2. The accident occurred on 28.03.2007. The petitioner herein was impleaded as the 3rd respondent-insurer and a cover note was produced, which indicated a coverage from 27.03.2007 to 26.03.2008. The petitioner, however, appeared before Court and submitted that the cover note has not crystallised into issuance of the policy, since the cheque issued to the petitioner-Insurance Company was dishonoured. It was in such circumstance that the 3rd respondent herein was impleaded as additional 4th respondent,

before the Tribunal. The 3rd respondent admittedly had issued an Insurance Policy on 29.03.2006, which was valid till 28.03.2007, the date of accident.

3. As has been stated by the learned counsel for the petitioner, obviously a policy was taken from the petitioner on the accident occurring on 28.03.2007 in the belief that there was no valid insurance for the vehicle. Subsequently, the 3rd respondent herein had been impleaded as additional 4th respondent before the Tribunal and it has come out on record that the 3rd respondent had issued a valid insurance policy for the period from 29.03.2006 to 28.03.2007. True, as is noticed by the Tribunal, petitioner issued the Insurance Policy after inspecting the vehicle. However, it was established before the Tribunal that the cheque issued as against the policy was dishonoured. Hence, no policy as such is in existence.

4. Be that as it may, the vehicle was covered by a valid policy as on 28.03.2007. The liability of the owner to take or renew an insurance policy would arise only on the expiry of the existing policy. The 3rd respondent had issued a valid cover, first in time and the

policy issued by it validly covered the vehicle as on the date of accident. This Court does not see any reason to uphold the apportionment made of 50% as against the petitioner and the 3rd respondent. The liability would be confined to that of the 3rd respondent. The petitioner would be absolved from such liability, as apportioned by the Tribunal.

The Original Petitions would stand allowed. No costs.

Sd/-
K. Vinod Chandran,
Judge

vku/

[true copy]