

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 16567 of 2010 (U)

PETITIONER(S) :

NIKHIL GEORGE, AGED 31 YEARS,S/O.GEORGE,
RESIDING AT PATTARUMADOM HOUSE,
ARAKUZHA.P.O, MUVATTUPUZHA.

BY ADVS.SRI.A.V.JAMES
P.DALBI EMMANUEL

RESPONDENT(S) :

1. THE INSURANCE OMBUDSMAN,
O/O.THE INSURANCE OMBUDSMAN, KOCHI.
2. THE NEW INDIA ASSURANCE CO.LTD.,
KANDAMKULATHY TOWERS, M.G.ROAD, ERNAKULAM, PIN-682 011.

R1 & R2 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.T.O.

WP(C).No. 16567 of 2010 (U)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: THE TRUE COPY OF THE COMPLAINT DATED 10.12.2009 FILED BY
THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P2: THE TRUE COPY OF THE AWARD DATED 16.02.2010 IN COMPLAINT
NO.10/KCH/G1/11-002-532/2009-10 OF THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

PS TO JUDGE

SK

K. VINOD CHANDRAN, J.

W.P.(C) No.16567 of 2010-U

Dated this the 14th day of July, 2015.

JUDGMENT

The petitioner, the owner of a Ford Fiesta Car, which had a package policy having a coverage of Rs.3,50,000/-, valid up to 29.03.2010, is aggrieved with the award passed by the Insurance Ombudsman, produced at Ext.P2. The vehicle, while running through inundated roads, stopped and on attempt to restart the engine, the engine seized functioning. A claim was raised for indemnification of loss totalling an amount of Rs.1,11,428/-.

2. The Insurance Company deputed a Surveyor, who assessed the net loss at Rs.3,465/- being the labour charges of cleaning of engine and replacement of gasket cylinder head and filter air cleaner alone. The claim of engine repair was disallowed by the Surveyor. The Insurance Company also declined such claim on the basis of the report of the Surveyor,

relying upon the exclusion clause with respect to any consequential loss caused.

3. The petitioner was before the Ombudsman, who passed the impugned award. The Ombudsman specifically dealt with the report of the Surveyor. The vehicle going through an inundated road, was a mere accident. But, it was found that when the vehicle stopped abruptly, the driver ought not to have attempted to restart the engine. The Surveyor had reported that if the vehicle had not been started after the water having entered the engine, the damage could have been rectified by cleaning of the engine and replacement of the gasket and piston ring. That is the only loss caused by the accident and the seizure of the engine was a consequential loss caused solely due to the attempt to restart the engine.

4. On attempting to restart the engine, it seized, due to the hydrostatic lock. The said technical term has been explained by the Ombudsman to mean that the chamber of the engine being filled with water, which is not compressible, the connecting rods would become bent and this leads to further damage caused to

the pistons and the engine itself. In such circumstances, the finding that the seizure of the engine was due to a consequential loss, which occurred for reason of the driver of the vehicle attempting to restart the vehicle, cannot be ignored.

There can hence be no fault found against the denial, since there is a specific exclusion of 'consequential loss' caused. The findings of the Ombudsman in Ext.P2 award are not liable to be interfered with.

The writ petition would stand dismissed.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

sp