

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 25474 of 2006 (G)

PETITIONER(S):

**THE ORIENTAL INSURANCE CO. LTD.,
MUVATTUPUZHA, REPRESENTED BY ITS
ADMINISTRATIVE OFFICER, REGIONAL OFFICE,
ERNAKULAM NORTH, KOCHI-18.**

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT(S):

**CHACKO ALIAS CHACKOCHAN,
THOTTAPPILLIL, KADAKKANAD, MAZHUVANNOOR P.O.**

BY ADV. SRI.K.JAJU BABU

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 25474 of 2006 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE AFFIDAVIT OF THE RESPONDENT.

EXHIBIT P1(a): TRUE COPY OF THE EXECUTION PETITION.

EXHIBIT P2. TRUE COPY OF THE OBJECTION FILED BY PETITIONER.

EXHIBIT P3. TRUE COPY OF THE ORDER DATED 27.3.2006.

EXHIBIT P4. TRUE COPY OF THE AFFIDAVIT IN IA.1399/2006.

EXHIBIT P4(a): TRUE COPY OF THE IA.NO.1399/2006.

EXHIBIT P5: TRUE COPY OF THE ORDER DATED 27.7.2006 IN IA.1399/2006.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms v/

K. VINOD CHANDRAN, J.

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W.P.(C) No.25474 of 2006 - G

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Dated this the 8th day of January, 2015

J U D G M E N T

The petitioner, an Insurance Company challenges Ext.P5 order of the Motor Accidents Claims Tribunal, Muvattupuzha, on the ground that the claim made by the claimant, was not sustainable and in effect Ext.P5 order would result in interest being paid on interest, which is specifically interdicted by a Division Bench decision of this Court in **Oriental Insurance Co. Ltd. v. Nirmala [2007 (1) KLT 38]**.

2. The claimant who is the respondent herein suffered injuries in a motor accident. The vehicle involved in the accident was insured by the petitioner herein. The claim petition filed by the respondent was allowed granting an amount of Rs.3,54,000/-. The petitioner took up the matter in appeal and in compliance of Section 173 of the

Motor Vehicles Act (for brevity, 'the MV Act'), 1988 made a deposit of Rs.25,000/- on 08.08.2003. Subsequently on 24.11.2003, a further amount of Rs.1,00,000/- was also deposited in compliance to the condition imposed for stay of execution.

3. Admittedly, the amounts deposited were not released to the claimant/respondent. Eventually, the appeal was disposed of reducing the amounts to Rs.2,58,000/-. The petitioner was also entitled to interest @ 9% from 01.08.1998, the date of filing of the claim petition. The insurance company deposited the amount of Rs.2,79,086/- on 02.01.2006, which according to them is in full and final settlement of the award amounts together with 9% interest. According to the insurance company the total comes to Rs.4,04,086/-. The respondent however, claims that there is deficiency in the interest paid.

4. To understand the claim of the respondent, Ext.P1(a) statement of the claimant, has to be looked into.

The claimant has calculated interest from 01.08.1998 to 08.08.2003, the date of deposit of Rs.25,000/-; on the award amount of Rs.2,58,000/-. Subsequently from the date of deposit of Rs.25,000/- till 24.11.2003, when Rs.1,00,000/- was deposited, again interest was calculated on the award amount. Further computation of interest is from 25.11.2003 to 02.01.2006 when the insurance company had deposited the entire amounts ie., on 02.01.2006. In such circumstance, there can be no infirmity found in the computation arrived at in Ext.P1. The deposit of Rs.25,000/- and Rs.1,00,000/- never exceeded the principal award amount and hence the deposit had to be first appropriated towards interest going by Rule 394 of the Motor Vehicles Rule, 1989 read with Order XXI Rule1 of the Civil Procedure Code.

5. This Court does not find any claim for interest on interest. The decision cited above would be applicable insofar as the dictum laid down that the insurer would be

liable to pay interest on the total amount awarded ignoring the amount of statutory deposit and the appropriation as provided under Order XXI Rule 1 of CPC. The amounts deposited under Section 173 of MV Act being Rs.25,000/- and the amount of Rs.1,00,000/- deposited as per the interim order of this Court, would not absolve levy of interest on the award amount from the date of award, till the date of payment to the claimant. The appropriation too has to be first towards interest and only then towards the principal.

In such circumstance, this Court does not find any infirmity in the orders passed, in execution and the writ petition would stand dismissed. The amounts directed to be paid by the impugned orders shall be paid if not already paid, within a period of two months from today. Parties are left to suffer their costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //
P.A to Judge.