

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

WP(C).No. 33717 of 2007 (L)

PETITIONER(S):

**B.SREENIVASAN, S/O.BHASKARAN, SURABHI
BHAVAN, NEDUVILA, MAMPAZHAKKARA
PERUMPZHATHOOR P.O.**

**BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.RAJAN VELLOTH
SRI.SAIJO HASSAN
SRI.A.S.SABU**

RESPONDENT(S):

- 1. THE INSURANCE OMBUDSMAN, 2ND FLOOR,
CC 27/2603, PULINAT BUILDING, M.G.ROAD
ERNAKULAM - 682 015, REPRESENTED BY ITS SECRETARY.**
- 2. THE NEW INDIA ASSURANCE CO.LTD.
REGIONAL OFFICE, KANDAMKULATHY TOWERS, M.G.ROAD
ERNAKULAM - 682 011 REPRESENTED BY ITS
ADMINISTRATIVE OFFICER.**

R,R2 BY ADV. SRI.SAJI VARGHESE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

kkj

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1: TRUE COPY OF THE INSURANCE POLICY CERTIFICATE DATED 26.11.2004**
- EXT.P2: TRUE COPY OF THE SAID CARRIAGE PERMIT DATED 28.09.2000 IN RESPECT OF THE PETITIONER'S VEHICLE**
- EXT.P3: TRUE COPY OF THE ORDER DATED 01.06.2006 PASSED BY THE 1ST RESPONDENT**

RESPONDENTS' EXHIBITS

- EXT. R1(A): TRUE COPY OF THE JUDGMENT DTD 22.07.2004 PASSED BY THIS HONOURABLE COURT IN 26291/00**
- EXT.R1(B): TRUE COPY OF THE JUDGMENT DTD 22.07.2002 PASSED BY THIS HONOURABLE COURT IN OP 10435/01**
- EXT.R1(C): TRUE COPY OF THE JUDGMENT DTD 07.07.2008 OF THIS HONOURABLE COURT IN WP(C) NO.17056/04**

// TRUE COPY //

PA TO JUDGE

“C.R.”

K.SURENDRA MOHAN, J.

W.P.(C) No.33717 of 2007

Dated this the 6th day of February, 2015

J U D G M E N T

The petitioner is the owner of a Tata truck bearing Regn.No.KL7/ C-6195. The vehicle was covered by a valid policy of insurance dated 26.11.2004 issued by the second respondent. The policy is Exhibit P1. The petitioner also had a goods carriage permit Exhibit P2 that was valid for the period from 28.09.2000 to 27.09.2005. On 15.01.2005, when the lorry was parked near a quarry, by the side of a hill where quarrying operations were in progress, a huge rock fell on the lorry and the vehicle was totally damaged. Since the petitioner's vehicle was covered under a comprehensive insurance policy valid up to 25.11.2005, the petitioner claimed the value of the vehicle from the second respondent. However, the claim of the petitioner was repudiated.

2. The petitioner challenged the repudiation of his claim before the first respondent. The complaint was taken on file, the matter was heard after the parties entered appearance and thereafter Exhibit P3 order was passed. As per Exhibit P3 order, it has been found by the first respondent that, the repudiation of the petitioner's claim was justified for the reason that, the petitioner's vehicle did not have a Fitness Certificate at the time of accident. The petitioner has filed this writ petition challenging Exhibit P3.

3. According to Sri Vishnu Bhuvanendran who appears for the petitioner, the Award of the first respondent is unsustainable and liable to be set aside. According to the counsel, the vehicle was covered by a valid Insurance Policy issued by the second respondent. The vehicle was totally damaged in the accident for which, the petitioner is entitled to be compensated. According to the learned counsel, absence of a Fitness Certificate has not been made a condition either in Rule 146 of 147 of the

Motor Vehicles Act. Therefore, the fact that the petitioner's vehicle was not covered by a valid Fitness Certificate cannot be a ground for repudiation of his claim for compensation. It is further contended that, it was the duty of the Insurance Company to have checked and verified whether the vehicle was covered by a valid Fitness Certificate before issuing the Insurance Policy. If the Fitness Certificate was valid only up to a particular date, the policy should have been issued only up to the date of expiry of the Fitness Certificate. The Insurance Company not having adopted the said course, it cannot be heard to contend that they would not admit the claim of the petitioner for the reason that his vehicle did not have a valid Fitness Certificate. The counsel for the petitioner therefore seeks the issue of appropriate directions setting aside Exhibit P3 and directing grant of compensation to the petitioner.

4. Advocate Saji Varghese appears for the second respondent. According to the counsel, the Award of the

first respondent does not call for any interference by this Court. It is pointed out that, a vehicle that does not have a valid Fitness Certificate cannot be said to be a vehicle validly registered under the Motor Vehicles Act. Similarly, a vehicle that does not have a Fitness Certificate cannot be said to have a valid permit under the Act. My attention is drawn to the condition in Exhibit P1 policy entitling the second respondent to repudiate a claim in such circumstances.

5. Heard. The limited question that arises for consideration is whether the lack of a valid Fitness Certificate for the vehicle of the petitioner would disentitle him from claiming the value thereof under Exhibit P1 Insurance Policy. There is no dispute regarding any of the other facts.

6. Section 39 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for short) mandates that, no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit a vehicle to be

driven in any public place or in any other place unless the vehicle is registered in accordance with the said Chapter. Therefore, a vehicle to be used in a public place or any other place 'has to be validly registered under the Act'. Section 56 of the Act further provides that a transport vehicle shall not be deemed to be validly registered for the purposes of Section 39, unless it carries a Certificate of Fitness in such form containing such particulars and information as may be prescribed by the Central Government, issued by the prescribed authority. Therefore, as per Section 56(2), a transport vehicle cannot be considered to be validly registered unless it has a valid Fitness Certificate. Section 66 of the Act provides that, no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle except in accordance with the conditions of the permit granted. Therefore, as per the above provision, a goods carriage vehicle should have a goods carriage permit before it could be used as a goods carriage. Section 84 contains the general conditions

attached to all permits. Section 84(a) reads as follows:-

84. General conditions attaching to all permits:- The following shall be conditions of every permit--

- (a) that the vehicle to which the permit relates carries valid certificate of fitness issued under section 56 and is at all times so maintained as to comply with the requirements of this Act and the rule made thereunder;

As per the above provision, a valid Fitness Certificate is a necessary condition for any permit. Absence of such Fitness Certificate would render the permit as one not in accordance with the provisions of the Act and the Rules thereunder.

7. The above provisions clearly show that, for an insurance claim to succeed, it is necessary that the vehicle should have a valid goods carriage permit, it should be duly registered under the provisions of the Act, and that it should have a valid Fitness Certificate. Admittedly, the vehicle of the petitioner in the present case had no valid Fitness Certificate at the time of accident. I have been taken through the conditions subject to which Exhibit P1 policy has been granted. Under the heading limitation as

to use, it has been stipulated as follows:-

“The policy covers use only under a permit within the meaning of the Motor Vehicles Act, 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicles Act 1988.”

As per the above provision, it is a specific condition that the vehicle shall be used only under a valid permit. As already found above, it is one of the conditions for the grant of a permit that the vehicle should have a Fitness Certificate at all times, which the owner is bound to comply. It has been specifically stipulated in Exhibit P2 goods carriage permit as condition No.10 as follows. “Conditions other than those specified in items 1 to 9 above and those under section 84 of the Motor Vehicles Act,1988, (Central Act 58 of 1988).” It is clear from the above that, the necessity of a Fitness Certificate for a goods carriage is a mandatory condition. The question as to whether use of a vehicle without Fitness Certificate would entitle the insurer to disclaim liability under the insurance policy was considered by a Division Bench of this Court in **Thara v.**

Syamala [2009(2) KLT 707]. In paragraph 2 of the said judgment, after considering the issue, this Court has arrived at the following conclusion.

In other words, a good carriage can be used on the road for carrying goods only after obtaining the permit and the use of the vehicle without fitness certificate or permit will entitle the insurer to dishonour the liability under the policy.

We therefore dismiss the appeals.

Though the counsel for the petitioner has placed reliance on a decision of the Madras High Court **United India Insurance Company Ltd v. K. Soundarajan**, [LAWS (MAD)-2010-12-343], I am not satisfied that the dictum in the said decision could be accepted in view of the authoritative pronouncement of the Division Bench of this Court.

For the above reasons, I find no grounds to interfere with the impugned Award. This writ petition is therefore dismissed.

Sd/-
K.SURENDRA MOHAN,
JUDGE