(2009) 12 KL CK 0119

In the High Court Of Kerala

Case No : M.A.C.A. No. 383 of 2009

National Insurance Co. Ltd. — APPELLANT

Vs

Sudheesh — RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 157, 157(1), 57(2)

Citation : (2011) ACJ 141 : (2010) 2 KLT 210

Hon'ble Judges : M.N. Krishnan, J

Bench : Single Bench

Advocate : Lal George and Ann Susan George, for the Appellant; Mathew Jacob and P. Jacob Mathew, for the Respondent

Final Decision : Allowed

Judgement

M.N. Krishnan, J.—This appeal is preferred by the National Insurance Company against the award passed by the Motor Accidents Claims Tribunal, Pala in O.P. (MV) No. 554 of 2006. By virtue of the award, the claimant was awarded a sum of Rs. 39,150/- and the National Insurance Company was directed to deposit the amount. The contention of the insurance company is to the effect that the vehicle involved in the accident was insured with the additional fourth respondent on the date of accident by virtue of a comprehensive policy and therefore it is liable to pay the amount. The learned Tribunal held that the policy issued by the appellant would be deemed to have been transferred and therefore the said insurance company cannot get exonerated from the liability.

2. The few facts necessary are that the appellant had issued a policy in the name of one Sudheeran and the said Sudheeran had sold the vehicle on 15.5.2005 in favour of one Jijo Thomas and the said Jijo Thomas had taken a policy from the fourth respondent for a wider coverage. The said policy is valid for the period from 27.5.2005 to 26.5.2006. The accident took place on 30.9.2005. Now the contention is that since the appellant company has issued a policy in the name of the previous owner by virtue of the statutory fiction u/s 157(1) of the Motor

Vehicles Act, it should have been deemed to be transferred in favour of the purchaser and therefore the said company cannot claim exoneration of the liability.

3. On the other hand, learned Counsel for the appellant would contend before me that it is true that the vehicle had been transferred. Subsequent to the transfer and before the accident, the owner of the vehicle had taken a policy from the fourth respondent and the said policy was in force during the period of accident. So, the question is what will be the impact of Section 157 of the Motor Vehicles Act and the subsequent issuance of the policy by the fourth respondent. Section 157 of the said Act was introduced by Amendment Act of 1989 and as per the said provision, when the vehicle is transferred, there is a deemed transfer of the policy as well and Section 57(2) envisages a situation that the transferee has to apply to the insurance company for a transfer of the policy.

4. Now the situation may arise where a vehicle is transferred and no other policy is taken by the transferee. In such a situation, it is perfectly justified in holding that the deemed fiction will come into operation and it cannot defeat the right of a third party who is entitled to claim compensation from the insured. But, now admittedly the policy stood in the name of the previous owner. The previous owner transferred the vehicle to the second respondent in the claim petition. The second respondent took a fresh policy in the month of May, 2005. The accident took place only in September 2005. So there was a valid coverage for the vehicle in the name of second respondent in the claim petition and it was issued by the additional fourth respondent. So the question of a deemed transfer may not be of any importance for the reason that the vehicle was validly covered by a policy in the name of the registered owner, who was the owner in possession of the vehicle on the date of accident. When it is so, one cannot hold that by virtue of the deemed transfer the original insurer has to pay the amount and subsequent insurer can keep quite. I feel such an approach will be really doing violence to the intention of the Legislature contemplated u/s 157 of the said Act.

Therefore the appeal is allowed and it is made clear that the claimant is entitled to compensation from the additional fourth respondent Cholamandalam M.S. General Insurance Co. Ltd., NSC Bose Road, Chennai and not from the third respondent National Insurance Company.

