(2014) 08 KL CK 0214

In the High Court Of Kerala

Case No : M.A.C.A. Nos. 1750, 1752, 1753, 1754, 1755 and 1756 of 2014

The National Insurance Co. Ltd. APPELLANT

Vs

Purushothaman C.K. RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 173(1)

Citation : (2014) 08 KL CK 0214

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : George Cherian, Sr. Advocate and K.S. Santhi, Advocate for the Appellant

Judgement

B. Kemal Pasha, J.—The 3rd respondent in O.P. (MV) Nos. 250, 251, 252, 253, 254 & 255 of 2010 has come up in appeal challenging the common award dated 26.04.2010 passed by the Motor Accidents Claims Tribunal, Kasaragod.

2. The petitioners in all the original petitions were passengers of a private jeep bearing Reg. No. KL-14A-5871 which capsized on 06.02.2010 whereby the petitioners sustained injuries. In paragraph 10 of the impugned award itself the Tribunal has shown that Ext. B1 policy discloses that it is only an ''act only policy'' covering liability to compensate third parties. It has been further admitted that all the petitioners are passengers of a private jeep. After making such observations, strangely, the Tribunal has held that there is no legal liability on the part of the 3rd respondent to indemnify the 2nd respondent owner and that still the vehicle is insured with the 3rd respondent, and that the 3rd respondent shall pay the amount and recover the liability from the 2nd respondent, who is the registered owner of the jeep. The insurer has come up in appeal.

3. Heard the learned counsel for the appellant Sri. George Cherian. The respondents are not contesting the case.

4. It is trite law that in the case of an ''act only policy'' there cannot be a coverage for the gratuitous passenger or the pillion rider, as the case may be, unless extra premium for such coverage has not been paid. In these cases, the Tribunal has found that the policy in question was an ''act only policy'' which would not cover gratuitous passengers. In such a case, the insurer is not liable to pay the amount as per the decision in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, . In National Insurance Company Limited Vs. Balan @ Balakrishnan and Others [2008(1) KHC 202], it was held that in the case of an ''act only policy'', there is no coverage for the gratuitous passenger of a private vehicle, unless extra premium for such coverage is paid. The same is supported by the decision in National Insurance Co. Ltd. Vs. Parvathneni and Another, wherein it was held that in cases wherein the insurance company has no liability to pay the compensation, it cannot be compelled to make the payment with a direction to recover it later from the owner of the vehicle. A Full Bench of this Court in Oriental Insurance Co. Ltd. Vs. Joseph, also has held as follows:

"By virtue of sub-s. (4) of S. 149, Court has to see whether there has to be a direction to pay and recover. If there are violations of the terms of the policy, the question of pay and recover would arise. When the case of the deceased is not covered under the policy, the question of pay and recover would not arise."

It seems that the Tribunal has erred in directing the appellant herein to pay the amount and to recover it later from the 2nd respondent. Therefore, that part of the impugned common award is liable to be set aside.

In the result, all these M.A.C. As. are allowed and that part of the impugned common award by which the appellant is directed to pay the amount and recover it from the 2nd respondent, is set aside. The award amount has to be paid by the 2nd respondent. The amount already deposited under Section 173(1) of the Motor Vehicles Act by the appellant, is ordered to be reimbursed to the appellant.

All the interlocutory applications in these appeals are closed.