(2014) 06 KL CK 0010

In the High Court Of Kerala

Case No : MACA. No. 2058 of 2012

The Oriental Insurance Company Ltd. APPELLANT

Vs

Biju A.P. RESPONDENT

Date of Decision : 12-06-2014

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

Citation : (2014) 06 KL CK 0010

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : VPK. Panicker, Advocate for the Appellant; K.N. Radhakrishnan (Thiruvalla), Advocate For R2, Advocate for the Respondent

Final Decision : Allowed

Judgement

B. Kemal Pasha, J.—The 3rd respondent in O.P. (MV) No. 1391/2004 against whom an order to pay compensation was passed by the Motor Accident Claims Tribunal, Pathanamthitta, with permission to the 3rd respondent to recover the said amount from the 2nd respondent, has come up in appeal.

2. The appellant had issued an ''act only policy'' in respect of the motorbike in question which was effective on the date of accident. The injured, who approached the Tribunal as petitioner, was the pillion rider of the said motorbike. Admittedly, no extra premium was obtained by the appellant for covering any such gratuitous passenger or pillion rider. In spite of finding that there was no coverage, the Tribunal has gone to the extent of passing an order directing the appellant to pay the amount to the petitioner, and then to recover it from the registered owner of the motorbike.

3. Heard the learned counsel for the appellant. There is no representation for any of the other parties.

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 this case, the Tribunal has found that the policy in question was an ''act only policy'' which would not cover the pillion rider. 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 recover it later from the 2nd respondent. Therefore, that part of the impugned order is liable to be set aside.

In the result, this M.A.C.A. is allowed and that part of the impugned 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 u/s 173(1) of the Motor Vehicles Act by this appellant, is ordered to be reimbursed to the appellant.

