

Philip Vs. State of Kerala

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Court : Kerala

Decided On : Sep-30-2013

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Philip

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR.
JUSTICE K.RAMAKRISHNAN MONDAY,THE30H DAY OF
SEPTEMBER20138TH ASWINA, 1935 MACA.No. 2129 of 2010 ()
----- (AGAINST THE AWARD IN OP(MV)NO. 1095/2003 OF
MOTOR ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM DATED2702-2009)
----- APPELLANT/2ND RESPONDENT:
----- THE ORIENTAL INSURANCE CO.LTD.,
METRO PALACE, OPP. NORTH RAILWAY STATION, ERNAKULAM,
REPRESENTED BY ITS DULY AUTHORISED OFFICER. BY ADV.
SRI.VPK.PANICKER RESPONDENT(S)/RESPONDENTS AND PETITIONERS:
----- 1. P.J.

BERNARD,S/O.JUSTINE P.J, PALLATHU HOUSE, PALARIVATTOM P.O.,
THAMMANAM, ERNAKULAM.

2. JOYSON J.

PALLAN,S/O.JOHN,PALLATHU HOUSE, HOUSE NO.119/C, NAROTH ROAD,THAMMANAM P.O, COCHIN-32, THAMMANAM DESOM, EDAPPALLY SOUTH VILLAGE, KANAYANNOOR TALUK. THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON3009-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts S.SIRI JAGAN & K.RAMAKRISHNAN, JJ.

===== M.A.C.A.No. 2129 of 2010 ===== Dated
this the 30th day of September, 2013

JUDGMENT

S.Siri Jagan, J.: The appellant is the insurance company in O.P.(M.V).No. 1095/2003 before the Motor Accidents Claims Tribunal, Ernakulam. The O.P. was filed by the 2nd respondent herein, claiming compensation for the injuries and consequent disability suffered by him in an accident caused by the negligent driving of a vehicle owned and driven by the 1st respondent while the 2nd respondent was riding as a pillion rider in the motor cycle driven by the 1st respondent. The vehicle was insured with the appellant. Before the Tribunal, the insurance company took the specific contention that the policy is one issued only for satisfying the requirements of the provisions of the Motor Vehicles Act, which policy was produced as Ext.B1 also. It is settled law that a pillion rider is not covered by a policy issued for the purpose of satisfying the requirements of the Motor Vehicles Act unless it is a package/comprehensive policy. The M.A.C.A.2129/10 - :

2. :- policy in this case is not a package/comprehensive policy and, therefore, according to the appellant, the 2nd respondent is not entitled to be covered by the policy for the purpose of paying compensation for injuries sustained by him while travelling as a pillion rider in a motor cycle. But the Tribunal has, without even considering that contention, made the insurance company liable for the compensation of ` 2,28,570/-. The appellant has filed this appeal challenging the finding regarding the liability of the insurance company to indemnify the insured for

the compensation assessed by the Tribunal.

2. Although notices in the appeal were received by respondents 1 and 2, both of them have not chosen to enter appearance to contest the matter. In fact, the 1st respondent was ex parte before the Tribunal also.

3. We have heard the learned counsel for the insurance company .

4. Ext.B1 policy is one issued to satisfy the provisions of the Motor Vehicles Act. The 2nd respondent was a pillion rider in the motor vehicle, which was insured with the appellant. The policy is not a package/comprehensive policy also. It is settled law that the insurance company is not liable to indemnify the M.A.C.A.2129/10 - :

3. :- owner of a motor cycle for compensation due in respect of a pillion rider in a motor cycle when accident occurs on account of the negligence of the driver of the motor cycle. In the above circumstances, we vacate the finding of the Tribunal that the insurance company is liable to indemnify the 1st respondent for the compensation awarded by the Tribunal for the injuries sustained by the 2nd respondent. Consequently, the appellant insurance company is not liable to pay the compensation awarded by the Tribunal. However, it would be open to the 2nd respondent to proceed against the 1st respondent for recovery of the compensation awarded by the Tribunal. With the above modification of the impugned award of the Tribunal, the appeal is disposed of. The amount already deposited by the appellant before the Tribunal shall be refunded to the appellant.

Sd/- S.SIRI JAGAN, JUDGE Sd/- sdk+ K.RAMAKRISHNAN, JUDGE ///True copy/// P.A. To Judge. M.A.C.A.2129/10 - :

4. :-

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