

Thara Vs. Syamala

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Court : Kerala

Decided On : Jan-09-2009

Reported in : 2009ACJ2440

Judge : C.N. Ramachandran Nair and; P.N. Ravindran, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 2(47), 14, 15 and 149(2)

Appeal No. : M.A.C.A. Nos. 2177 of 2005 and 63 of 2009

Appellant : Thara

Respondent : Syamala

Advocate for Def. : P. Sivaraj and; Sarah Salvy, Adv.

Advocate for Pet/Ap. : P.B. Suresh Kumar and; Leo George, Adv.

Disposition : Appeal dismissed

Judgement :

C.N. Ramachandran Nair, J.

1. In these connected cases filed by the registered owner of the vehicle, the challenge is limited to the order of the Motor Accidents Claims Tribunal authorising the insurance company to recover the compensation amount from the insured after satisfying the award. The appellant's case is that the goods vehicle involved

in the accident had permit and fitness certificate at the time of taking the insurance policy and the same were valid from 16.2.1996 to 15.2.2001. Accident admittedly happened on 5.6.2001 when the vehicle ceased to have the permit which was valid only till 15.2.2001. The vehicle also did not have a fitness certificate which is the requirement for renewal of permit.

2. The question to be considered is whether the insurance company is bound to indemnify the insured for the damages awarded to the victims. Learned Counsel appearing for the appellants relied on a Full Bench decision of this Court in *Oriental Insurance Co. Ltd. v. Paulose* : 2004 ACJ 457 (Kerala) and contended that the insurance company is liable to pay compensation in this case as there was valid policy for the vehicle. However, we notice that the case decided by this Court pertains to a vehicle driven by a person whose driving licence had expired when the accident occurred. However, relying on the provisions of Sections 14 and 15 of the Motor Vehicles Act (hereinafter referred to as 'the Act' for short), this Court held that there is deemed validity for driving licence for one month for its renewal even after the expiry and, therefore, during this period if the accident occurred, the insurer cannot escape from the liability. In that case, the court below found that the driving licence was later renewed also. However, in this case, the vehicle involved in the accident admittedly did not have a valid fitness certificate or permit at the time of the accident. Section 149(2)(a)(i)(c) of the Act provides that an insurer can escape from the liability if the vehicle at the time of the accident was used for a 'purpose' not allowed by the permit where the vehicle is a transport vehicle. The appellant's vehicle comes under the definition of 'transport vehicle' as contained in Section 2(47) of the Act, which includes goods carriage as well. On going through the policy produced before us, we find that the above provision of the Act is incorporated in the policy as a condition under the head 'general conditions' which provides that the insurer shall not be liable for any claim arising while the motor vehicle is being used otherwise than in accordance with the limitation as to its use. It is obvious from the above provision of the Act incorporated in the policy that the goods vehicle must have a permit. The effect is that a goods vehicle though covered by a policy of insurance will cease to be covered by the policy when permit expires. This is exactly what happened in the case of the appellant's vehicle that the fitness certificate and the permit had

expired prior to the date of the accident. Even though learned Counsel for the appellant relied on Section 149(2)(a)(i)(c) of the Act and contended that since the vehicle was used for the purpose for which it is permitted it is covered by the policy, we do not think the argument is acceptable because even though the use of the vehicle is for the purpose for which the vehicle was intended, such use is permissible under the Act only when the vehicle has a permit. In other words, a goods 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.

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