

**Jose Vs. Insurance Regulatory and Development Authority**

**Jose Vs. Insurance Regulatory and Development Authority**

**SooperKanoon Citation :** [sooperkanoon.com/731044](http://sooperkanoon.com/731044)

**Court :** Kerala

**Decided On :** Dec-12-2002

**Reported in :** II(2003)ACC506; 2003(1)KLT754

**Judge :** M. Ramachandran, J.

**Acts :** [Insurance Act, 1938](#) - Sections 64UC

**Appeal No. :** O.P. No. 31646 of 2002 and connected cases

**Appellant :** Jose

**Respondent :** insurance Regulatory and Development Authority

**Advocate for Def. :** P.S. Sreedharan Pillai, S.C.G.S.C.,; V.B. Premachandran,;

**Advocate for Pet/Ap. :** I. Dinesh Menon,; G. Prabhakaran,; V. Giri,;

**Judgement :**

**M. Ramachandran, J.**

1. This batch of Writ Petitions could be jointly disposed of especially taking note of the stand taken by the Insurance Regulatory and Development Authority, the Tariff Advisory Committee (General Insurance) and the four Insurance Companies in the public sector, viz., New India Assurance Company Limited, National Insurance Company Limited, Oriental Insurance Company Limited and the United India

Insurance Company Limited. O.P. No. 31646 of 2002 is taken as the leading case, since pleadings are complete. The parties above referred to are respectively respondents 1 to 6 in the said Writ Petition. The counsel representing the petitioners in the other Original Petitions were also heard and the positions explained were acceptable to them. Apparently this is because the 1st and 2nd respondents had risen to the occasion, understanding and appreciating the grievances that were voiced in the batch of cases, and bound by the edicts issued by them, the insurers were disabled to strike discordant notes, though they would have very much wished to have freedom for negotiations. This is because under Section 64UC of the Insurance Act, the Advisory Committee, statutorily recognised, has been vested with power for fixing, amending or modifying any rates, advantages, terms or conditions, relating to any risk and the decisions are given finality. A breach would have led to a presumption that the insurer would have contravened the provisions of the Act.

2. The issue agitated was about the demand and insistence for increased tariff pertaining to third party premium, in respect of the vehicles, and especially commercial vehicles. Petitioners submit that the premium payable in respect of the different classes of vehicles, are statutory fixed by the Tariff Advisory Committee (hereinafter referred to as TAC). By Ext. P1, in a comprehensive manner, they had laid down Rules, Regulations, Rates, advantages, terms and conditions, for transaction of motor insurance in consonance with Part II B of the [Insurance Act, 1938](#). The tariff superceded the one existing as on 30.6.2002. Rationalisation was brought about by order dated 25.4.2002 and on 17.5.2002, the Chairman, TAC clarified the methodology for 'loading' (added increase of the rates) as following:

'It is now clarified that insurers may load the Third Party Tariff Motor premium by 100% if the claim experience of any individual owner is adverse as per the insurers assessment. If the experience continues to be bad, then a further loading of 100% on the expiring premium can be charged. Insurers may not load the premium further. This order issues under Section 64UC of the [Insurance Act, 1938](#)

!

3. Thus the increase was only to be on the basis of individual cases, noticing their track record. But overlooking the binding orders, certain instructions came to be passed by the State owned companies in effect permitting their offices to load much more than permissible limits. The TAC had therefore issued further instructions, by circular dated 28.5.2002 positively holding that loading was to be done only within permissible limits, on the claim experience of particular individual/fleet owner and not on a universal basis. By Ext. P4 the Regulatory Authority also had come to the scene, as it had been found that the insurers were attempting to have field days. Most of the cases came to be filed in the above period. The companies were instructed to issue Circulars to all operating offices, for the purpose of general instruction and for avoiding complaints, but this was not being dutifully followed.

4. The petitioners point out that the instructions were practically violated by impugny, as could specifically be found in the circular issued by the 6th respondent. They had attempted to avoid acceptance of third party policies, and Kerala State had been described as an adverse claim zone. Paragraphs 5 and 6 of the circular as extracted would explain the general trend in the approach:

'5. For Commercial Vehicle Liability (TP) Policy renewals, 100% loading has to be done, even if there are no claims under the policy since Kerala as a Geographical Zone is considered as adverse claims zone for the purpose of underwriting such business. However, for Own Damage the tariff premium can be charged and loading if required as per GR 3B.

6. No Public Service Vehicle (Passenger) should be accepted for insurance for either Package or Liability Policy. However, renewals of such proposals placed by Banks/reputed Financiers like Ashok Leyland Finance, etc., may be accepted without refusal.'

By interlocutory orders, passed at the time of admission of the cases, it had been directed that third party premium may be accepted with a 30% increase from the last year, and only in such of those cases, where there was no claims put up during the immediate past year. Every one of the petitioners had been satisfied about the arrangement, as no objections at any point of time had come from them.

The tariff rates had been increased, but in majority of the cases that had been filed, the operators were aggrieved about the proposal of loading contemplated overlooking the directives of the 1st and 2nd respondents. To take an instance, the prayers in O.P. No. 31646/2002 are:

i. Issue a writ in the nature of declaration that the Insurance Companies doing insurance in general business are entitled to collect insurance premium only in accordance with the tariff order issued in that behalf by the Tariff Advisory Committee, notified under Section 64UC of the [Insurance Act, 1938](#);

ii. Issue another writ in the nature of declaration that General Insurance Companies represented by the respondents 3 onwards are not entitled to recover from the petitioners any amount by way of insurance premium for compulsory third party coverage, in excess of the premium fixed under Ext. P1 tariff order, without any manner loading the premium ;

iii. of mandamus or such other writs, order or direction, commanding the respondents 3 onwards to take appropriate action for renewing the third party coverage of the vehicle insurance issued to the petitioner, without insisting on any loading of the premium, payable in respect of the vehicles owned by the petitioners,'

5. When the cases were listed, it had also been submitted that what really hurt the petitioners were the 'loading' attempted, and nobody had addressed me about the increase in the tariff rates as such. In some of the Original Petitions, the formulation of the issue were satisfactorily done.

6. Counter affidavit filed by the TAC in fact has given a quietus to the matter. Though respondents 3 to 6 were represented by the standing counsel, they submitted that the policy explained by 1st and 2nd respondents had very well been accepted by them, and they had already issued instructions to follow the prescriptions. It may be that they are at the receiving end. As one of the counsel pointed out, unless nationalised companies had other lines apart from motor insurance, they would have been in the red far earlier. But the expert Committee and Authority have the last word, and this have to be scrupulously implemented. In

fact a suggestion had come as a loud thinking that in the matter of compensation vis-a-vis motor accidents, a uniform scale of compensation, as was being followed world wide in respect of air transport, rail and the like would have been more appropriate as what was involved was human life. But these being policy matters are beyond the purview of present proceedings and the Government and respondents 1 and 2 would do well to bestow thoughts in these lines.

7. Mr. K.L. Narasimhan, counsel appearing for the second respondent, led me though the orders dated 17.5.2002 and 28.5.2002, referred to earlier, and thereafter to the letter of the first respondent to Insurance Companies, dated 1.8.2002, which ran as following:

'The Authority has been repeatedly getting complaints from various quarters that the underwriting officers of the company have been turning down exclusive third party proposalsto vehicles having a valid fitness certificate. Further the Authority has been informed that the loading of premium is being done in any arbitrary manner without taking cognizance of that the loading can in no way exceed 200% depending on the claims experience. We again reiterate that this is not acceptable to the Authority. The circular issued by the Authority has to be followed by all offices both in letter and spirit, failing which the Authority will constrained to take action under the provisions of the [Insurance Act, 1938](#).'

He further submitted that during the pendency of the writ petitions, taking note of the resentment of the customers a meeting had been arranged to be held and the Chief Officers of the Insurance Companies and transport operators had participated and consensus was arrived at. It had been generally circulated. Paragraph 2 of the circular dated 29.10.2002 might be relevant, and is as shown below:

'Since the loading on the tariff premium for advance claims experience for the first renewal is stipulated not to exceed 100%, there cannot be any loading beyond 100% for the renewals falling during the one year period commencing from July 1, 2002. In cases where no claims have been lodged in the previous year or where the owners enjoy no claim bonus, no loading should be made. There shall be no uniform loading of 100% in all cases. The loading up to 100% is to be made in

individual cases depending upon the claims profile.'

The net result, the counsel points out in the matter of loading is as following (GR 3B -Ext. P1):

'Rates provided under this tariff are minimum rates. Loading on tariff premium rates by 100% may be applied for adverse claims experience of the vehicle insured and individual risk perception as per the insurers assessment. If the experience continues to be adverse, a further loading of 100%; on the premium may be applied. No further loading shall apply.'

This indeed satisfactorily resolve the issue as far as the petitioners are concerned, as the sting of blind loading is removed. It is directed that in the matter of loading, the parameters as extracted above, and the Circulars issued by the first and second respondents are to be scrupulously observed. This is because Section 64UC of the Act envisages that the Advisory Committee is expected to take note of all relevant aspects. I may extract Sub-section (2) as herein below:

'(2) In fixing, amending or modifying any rates, advantages, terms or conditions, relating to any risk, the Advisory Committee shall try to ensure, as far as possible, that there is no unfair discrimination between risks of essentially the same hazard, and also that consideration is given to past and prospective, loss experience:

Provided that the Advisory Committee may, at its discretion, make suitable allowances for the degree of credibility to be assigned to the past experience, including allowances for random fluctuations and may also, at its discretion, make suitable allowances for future fluctuations and unforeseen future contingencies, including hazards of conflagration or catastrophe or both.'

8. Anxious about the impact that may have been there on their clients, the standing counsel for the companies pleaded that there should not be any direction to refund amounts already paid, on whatever account. This is because according to them the clarifications have come only now.

9. But there is neither logic nor fairness in the submission. The 1st and 2nd respondents had been imploring for judicious approach, but the insurers were

attempting to make hay nonchalantly. The clarification only explained what there was earlier, and nothing new. The companies have necessarily to disgorge what has been gulped in excess right now, or if their clients are agreeable, give credit to the excess payments already remitted by way of loading at the time of fresh renewals, and at the option of the vehicle owner. It is so directed. The loading is to be strictly as referred to in paragraph 7, which only endorses the views aired by respondents 1 and 2.

10. I make it clear that only the issue of loading has been dealt with here. If any of the Original Petitions presently closed, challenges as well the general hike in insurance rates as brought about in Ext. P1, their liberty to agitate the matter are not in any way curtailed. Though the procedure for bringing about the increase and the increase itself appear to be valid and reasonable, as the petitioner were not prepared to address on the issues, such of the Original Petitions will be heard separately.

11. The petitioners will have credit for the 30% increased payments, already made and consequently the benefit, of the policy for the concerned year. Yet in any of the cases now being disposed of, where loading is permissible on the yardsticks presently approved, the Insurance Companies will have all the rights to claim the balance amount on a process of loading, and the insurance coverage will be deemed as valid, only if payments are made within two weeks of demands being made for the current year. In other cases also where there is likelihood of deficiency in payments, on demand of respective petitioners will pay the additional sums required, as the interim orders had anticipated such contingencies.

12. The Original Petitions are disposed of as above. Parties will suffer their respective costs.