2025:KER:36824

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

WEDNESDAY, THE 28TH DAY OF MAY 2025 / 7TH JYAISHTA, 1947

MACA NO. 285 OF 2017

OPMV NO.312 OF 2010 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA

APPELLANT/ADDL.4TH RESPONDENT

HDFC ERGO GENERAL INSURANCE COMPANY LTD THRISSUR, REPRESENTED BY ITS MANAGER (LEGAL), REGIONAL OFFICE, RAJAJI ROAD, ERNAKULAM.

BY ADVS.
SRI.GEORGE CHERIAN (SR.)
SMT.LATHA SUSAN CHERIAN- SC
SMT.K.S.SANTHI

RESPONDENTS/CLAIMANTS,1ST RESPONDENT & ADDL.RESPONDENTS 2 & 3

1 **ZEENATH, W/O.DECEASED MOHAMEED ANEEFA, CHIRAPARAMBIL HOUSE, P.O.KIZHUPULLIKARA, THRISSUR DISTRICT-680001**

2 **LIJIN, CHIRAPARAMBIL HOUSE, P.O.KIZHUPULLIKARA, THRISSUR DISTRICT-680001**

3 **LINSIYA (MINOR) CHIRAPARAMBIL HOUSE, P.O.KIZHUPULLIKARA, THRISSUR DISTRICT, PIN 680001, REPRESENTED BY HER MOTHER 1ST RESPONDENT.**

4 **AMINA, W/O KOCHUMON, (DIED)**

CHIRAPARAMBIL HOUSE, P.O.KIZHUPULLIKARA, THRISSUR.PIN-680001
(RESPONDENTS 1 TO 3 ARE RECORDED AS THE LEGAL HEIRS OF THE DECEASED 4TH RESPONDENT AS PER ORDER DATED 19.11.2020 IN IA 1/2020 IN MACA 285/2017).

5 JOSE, S/O.JOHNY, AMBUKAN HOUSE, KUZHIKATTISSERY DESOM, P.O.THAZHEKKADU, THRISSUR DISTRICT., PIN-680001

6 JOBY, S/O.JOHNY, AMBUKAN HOUSE, KUZHIKATTISSERY DESOM, P.O.THAZHEKKADU, THRISSUR DISTRICT., PIN - 680001

7 SHAIJU, S/O.KOCHUVAREED, KOKKATTIL HOUSE, P.O.VALLAKKUNNU, KALLETTUMKARA, THRISSUR., PIN-680001

BY ADVS.
N.AJITH – R1 TO R3
NIREESH MATHEW – R5 & R6
N.L.BITTO - R7

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 21.5.2025, THE COURT ON 28.05.2025 DELIVERED THE FOLLOWING:

2025:KER:36824

C.R.

JUDGMENT

Dated : 28th May, 2025

Additional 4th respondent (the insurer) in OP(MV) No.312/2010 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda is the appellant. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal).

2. The above OP was filed by the wife, minor children and mother of deceased Mohameed Aneefa, who died in a motor vehicle accident that occurred on 23.3.2010. According to the petitioners, on 23.3.2010 at about 1.10. p.m., while the deceased was riding a motor cycle, a car bearing registration No.KL-45-B-70 driven by the 1st respondent stopped carelessly and a passenger sitting on the rear side of the car negligently opened the back door, and the door hit against the motor cycle of the deceased. As a result of which, the deceased fell down, sustained serious injuries and succumbed to the injuries on the same day. The 2nd respondent is the RC owner, 3rd respondent is the passenger who opened the door of the car, 1st respondent is the defacto owner and additional 4th respondent is the insurer of the offending car.

3. Before the Tribunal, the respondents 1 and 2 remained exparte. The 3rd respondent filed a written statement denying negligence on his part. The 4th respondent/insurer filed written statement contending that there was no valid insurance policy to the car at the time of the accident. The 4th respondent also denied negligence on the part of respondents 1 and 2. The Tribunal however,

found negligence on the part of the 3rd respondent and also found that there was valid insurance coverage for the car at the time of the accident, awarded a compensation of Rs.42,34,589/- and directed the insurer to pay the same. Being aggrieved by the above Award, the additional 4th respondent preferred this appeal.

4. Heard Sri. George Cherian, the learned Senior Counsel appearing for the appellant, Sri.N.Ajith, Sri. Nireesh Mathew and Sri.N.L.Bitto, the learned Counsel for the respondents 1 to 3, 5 & 6 and 7 respectively.

5. In the light of the arguments advanced, the points that arise for consideration are the following:

1) *Whether the offending vehicle had valid insurance policy at the time of the accident?*
2) *Whether failure to give notice of cancellation of policy is fatal, in the facts of this case?*

6. The learned Senior counsel would argue that, the offending vehicle had no valid insurance policy at the time of the accident and that the finding of the Tribunal to the contrary is not correct. On the other hand the above argument of the learned Senior counsel was strongly opposed by the learned counsel for the petitioners and other respondents and they maintained that there was valid insurance policy to the vehicle.

7. Ext.B1 series is the proposal form cum cover note, relied upon by both sides, to substantiate their respective arguments. Ext.B1 was

produced before the Tribunal, by the insurer/appellant. According to the appellant, though Ext.B1 was prepared, it was cancelled then and there, as the owner of the vehicle failed to pay the premium. RW1 examined on behalf of the insurer also deposed that, though Ext.B1 was prepared, it was not actually issued to the owner of the vehicle. Instead, according to her, the policy was cancelled then and there, as the owner of the vehicle failed to pay the required premium. The contention of the learned counsel for the petitioners and other respondents is that notice regarding the cancellation of Ext.B1 was not issued to the insured and as such it is still valid and binding on the appellant.

8. The Tribunal proceeded to hold that, since Ext.B1 contained the signature of the authorised signatory of the insurer as well as the proposor, it was a validly executed policy document and as such, once it is cancelled after it's execution, notice is to be issued to the insured. During the cross-examination of RW1, she also admitted that no such notice was issued to the insured and the above answer given by RW1 was strongly relied upon by the learned counsel for the petitioners and insured to substantiate their contention.

9. It is true that, in terms of S.64-VB of the Insurance Act, 1938 a policy can be issued on receipt of a cheque or postal money order. Relying upon the decision of a Division Bench of this Court in **Oriental Insurance Co.Ltd. v. Raveendran, 2015 (2) KLT 958**, the learned counsel for the petitioners and R.C.owner/insured would argue that once the policy issued by the insurer is cancelled, the said fact is to be intimated to the insured and in the absence of any

such intimation, the insurer will be liable to satisfy the claim of third parties.

10. He would also rely upon the decision of the Hon'ble Supreme Court in **United India Insurance Company Limited v. Laxmamma & Ors., (2012) 5 SCC 234**, in which a cheque given by the owner of the vehicle towards the premium got dishonoured and subsequent to the accident, the insurer cancelled the policy of insurance. In the above context, the Apex Court held that once a Company cancells the policy of insurance and sends intimation thereof to the owner, the Insurance Company's liability to indemnify the third parties, which that policy covered ceases and the Insurance Company is not liable to satisfy awards of compensation in respect thereof.

11. In **Laxmamma** (supra), after analyzing the relevant statutory provisions and various binding precedents on the point, in paragraph 19 the Apex court held that:

> *"In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of S.147(5) and S.149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of*

insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof".

12. On the other hand, the learned Senior counsel would argue that the original of Ext.B1 including all four copies (customer copy-1, customer copy-2, insurer's copy and copy for office use) is still in the possession of the company, which means that though it was prepared, it was not handed over to the insured, as the premium was not paid. According to him, since the premium was not paid, either by cash or cheque, it was cancelled then and there. The learned Senior counsel would argue that, since Ext.B1 was cancelled then and there, the owner of the vehicle was aware of the cancellation also, then and there and as such there was no necessity to issue any further notice to the insured. Therefore, according to him, in this case no policy was executed or issued to the owner of the offending vehicle.

13. As noted above, the law is well settled that once a policy of insurance is issued on the strength of a cheque and the policy is cancelled when the cheque got dishonoured, the factum of cancellation of the policy is to be intimated to the insured before the accident and till such intimation the insurer will be liable to the third parties. It is true that in the instant case, in respect of cancellation of Ext.B1 policy, no written intimation was given to the owner of the vehicle.

14. It is interesting to note that, in this case, the owner of the offending vehicle has no consistent case with regard to the payment of the

premium for Ext.B1. The learned counsel could not convince the court that the 2nd respondent/owner has actually paid the premium in respect of Ext.B1 cover note/policy, either by way of cheque, cash or by any other means. When such a specific question was put to the learned counsel, at the time of the argument, he claimed that, at first a cheque was given and thereafter cash was paid after receiving back the cheque. If the premium was paid by cash as now submitted by the learned counsel, there was absolutely no reason or necessity for the cancellation of Ext.B1. In this case the respondents 1 and 2 have not adduced any oral or documentary evidence. In fact, they remained exparte before the Tribunal.

15. From the evidence of RW1 it is revealed that though Ext.B1 was prepared, since the premium was not paid, it was cancelled then and there and that is why it was not handed over to the 2nd respondent. If Ext.B1 was issued to the 2nd respondent, it's original would have been in his possession. The 2nd respondent has not offered any explanation as to how the original of Ext.B1 along with it’s all four copies (including customer copy-1, customer copy-2, insurer's copy and copy for office use) happened to be in the possession of the Insurance Company. In the absence of any such explanation, the only presumption that can be arrived at on the basis of the evidence on record is that, Ext.B1 never reached the hands of the 2nd respondent/owner.

16. In the Award, the Tribunal observed that, the insurance Company might have received the original cover note from the R.C.owner subsequently. However, for arriving at such a conclusion, there is absolutely no

material before the court. In the absence of any such evidence, the Tribunal was not justified in finding that the insurance Company might have received the original cover note from the R.C.owner subsequently. At the time of arguments, even the 2nd respondent has no such case. Therefore, the evidence of RW1 in that respect that Ext.B1 was cancelled then and there as the 2nd respondent failed to pay the premium for the same can only be believed. Since Ext.B1 never reached the hands of the 2nd respondent and it was cancelled then and there and the same was retained by the Insurance Company itself, the reason for the same can only be as stated by RW1 that the R.C.owner failed to pay the premium.

17. Since Ext.B1 was cancelled immediately after its preparation and execution as the owner of the vehicle failed to pay the premium and it was retained by the Insurance Company itself, it is to be held that the factum of it's cancellation was very much known to the owner of the vehicle then and there. The purpose of notice is to bring to the notice of the insured, the factum of cancellation of the policy. If the insured is aware of the factum of cancellation of the policy, no further notice to him in that respect is required. In the above peculiar facts and circumstances of this case, there was no necessity to issue any notice to the 2nd respondent, intimating him about the cancellation of Ext.B1 policy. In other words, separate notice or intimation regarding cancellation of policy is required only when the policy was cancelled after it was executed and delivered to the insured. Since in the instant case immediately after preparing and executing Ext.B1, it was cancelled then and there and it was retained by the insurer, absence of separate

notice intimating the factum of cancellation is not fatal. Therefore, this is a case in which no insurance policy was issued to the offending vehicle and as such, the order of the Tribunal mulcting the liability on the appellant is liable to be interfered with.

18. The quantum of compensation awarded by the Tribunal is not under challenge. Therefore, I do not find any grounds to interfere with the quantum of compensation awarded by the Tribunal. However, the direction of the Tribunal to the insurer to pay the compensation is liable to be set aside, as in this case there is no valid insurance policy to the offending vehicle. Since the 2nd respondent is the RC owner of the offending vehicle, liability is on him to pay the compensation awarded in this case.

19. In the result, this appeal is allowed. The impugned Award to the extend it directed the additional 4th respondent to pay the compensation is set aside. The 2nd respondent, being the RC owner, is directed to pay the compensation awarded by the Tribunal to the petitioners.

Sd/- C. Pratheep Kumar, Judge

Mrcs/20.5