IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 14TH DAY OF OCTOBER 2022 / 22ND ASWINA, 1944

MACA NO. 1590 OF 2014

AGAINST THE ORDER/JUDGMENT DATED 19.10.2005 IN OPMV 2059/1995 OF II ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL , KOZHIKODE

APPELLANT/R3:

THE KERALA STATE INSURANCE DEPARTMENT
DISTRICT INSURANCE OFFICE, KOZHIKODE.

BY ADV.E.C.BINEESH,
ADV.SRI.SREEJITH V.S., GOVERNMENT PLEADER

RESPONDENTS/PETITIONER & RESPONDENTS 1, 2, 4 TO 6 IN THE OP:

1 P.RAJAN, S/O.KUNHIRAMAN NAIR,PUTHIYOTTIL HOUSE.P.O,MODAKKALLUR,(VIA)ATHOLI,KOZHIKODE,PIN-673321.

2 K.K.PATHUMMAI, W/O.ABOO HAJI,KUNIYIL HOUSE,ORAVIL AMSOM DESOM, P.O.ORVAIL(VIA), NADUVANNUR, KOZHIKODE, PIN-673614.

3 K.MOIDEEN KOYA, S/O.MAMMED,KOLLARUKANDY MEETHAL HOUSE,ULLIYERI AMSOM DESOM OF KOZHIKODE,P.O.ULLIYERI,PIN-673323.

4 K.PRAKASAN, S/O.APPUKUTTY,KALATHIL HOUSE,PUTHIYANGADI.P.O,KOZHIKODE,PIN-673021.

5 NOUSHAD, S/O.MUHAMMED,THAZHALOLAKAM HOUSE,PANDALAYANI,BEACH ROAD,KOYILANDY.P.O,PIN-673305.

6 NATIONAL INSURANCE COMPANY LTD
BRANCH OFFICE,JAIL ROAD,CALICUT,PIN-673001.

BY ADVS.
SRI.K.M.FIROZ FOR R1
SMT.M.MANJU
SRI.JACOB ABRAHAM
SRI.JESWIN P.VARGHESE
SRI.S.KANNAN
SMT.M.MANJU
SMT.RAJI T.BHASKAR
SRI.R.SUDHISH FOR R2 & R3
SMT.M.SHAJNA

OTHER PRESENT:

SRI.E.C.BINEESH, SRI.SREEJITH V.S.- GP

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 14.10.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.JAYACHANDRAN, J.

MACA No.1590 of 2014

Dated this the 14th day of October, 2022

J U D G M E N T

1. The Kerala State Insurance Department, the third respondent in OP(MV) No.2059/1995 of the Additional Motor Accidents Claims Tribunal-II, Kozhikkode is the appellant. As per the award impugned dated 19.10.2005, the appellant/R3 stands directed to deposit the award amount, together with interest. The challenge is on the solitary premise that the vehicle in question - a car bearing regn.No.KL-11/B-4314 - was not insured by the appellant/R3, wherefore, the liability fixed on the appellant to deposit the compensation amount is illegal and liable to be interfered with.

2. Heard the learned counsel for the appellant/R3 and the learned counsel for the first respondent/claimant. Learned counsel for

respondents 2 and 3, the owner and driver respectively of the offending vehicle, were also heard. Perused the records.

3. Sri.E.C.Bineesh, learned counsel for the appellant/R3 submitted that at the relevant time, the vehicle in question was not issued with any insurance policy by the appellant. It is without looking into this aspect that the learned Tribunal has passed an award against the appellant. Learned counsel also pointed out that although there is delay in filing the instant appeal, the same stands condoned as per order of this Court dated 13.01.2017, upon payment of a cost of Rs.2000/-. Though not duty bound, the appellant produced an insurance policy, which would go to show that the vehicle in question was insured with the Oriental Insurance Company at the relevant time. The long and short of submission of the learned Government Pleader is that in the absence of a policy, the appellant should not be mulcted with the responsibility of paying compensation to the claim

petitioner.

4. Adv.K.M.Firoz, learned counsel for the R1/claimant submitted that the award was passed on 19.10.2005 in respect of an accident which took place on 08.04.1995. With considerable delay of more than 3 years, the appellant filed an application for review before the Tribunal, which was dismissed as per order dated 13.10.2010. Even reckoned from that date, there is substantial delay of about 4 years in preferring the instant appeal, which is filed only in the year 2014.

5. Reckoned from the date of the impugned award, there is a delay of more than 8 years in preferring the instant appeal, which however, stands condoned by order dated 13.1.2007 of this Court upon payment of a paltry some of Rs.2,000, submits the learned counsel. Sri.K.M.Firoz then espoused the plight of the first respondent/claimant, occasioned only because of the callous negligence on the part of the appellant/R3. It was pointed out that the

R1/claimant, who met with an accident in the year 1995 and who was favoured with an award in the year 2005 could not realise the compensation amount of Rs.28,000/-, together with interest even in the year 2022. Learned counsel submitted that if at all the appeal is to be allowed, the hardship, prejudice and jeopardy caused to the R1/claimant has to be compensated. Learned counsel further pointed out in this regard that the appellant/R3 had entered appearance before the Tribunal through Adv.K.M.Mathew, but did precious little thereafter. No written statement was filed denying the policy, even when the second respondent/owner (first respondent in the OP) of the vehicle admitted the policy with the appellant/insurance company, as claimed in the Original Petition. It was further pointed out that on the event of allowing the appeal and remanding the matter to the Tribunal, this Court may clarify that the R1/claimant is entitled to the benefit of the proviso to Section 21 of the Limitation Act, in the context of impleading the proper insurance company, as

otherwise, a plea of limitation is most likely to be pressed into service by the insurance company being impleaded. It was also urged that equitable directions be given in the light of a probable argument pertaining to exoneration of payment of interest by the insurance company to be impleaded from the date of claim, until the date of impleadment.

6. Learned counsel for the second respondent, the owner of the vehicle, submitted that although the owner committed a mistake in admitting the policy claimed by the petitioner, that will not exonerate the claimant from establishing before the Tribunal that the policy claimed in the petition covers the vehicle in question. Such matter cannot be decided on the basis of an alleged admission of the owner of the vehicle. The claimant has never produced the final report before the learned Tribunal, which if done, would have prevented the present precarious situation. Therefore, the owner cannot be mulcted with the responsibility to pay interest from the

date of petition upto the date of impleadment, is the submission of the learned counsel.

7. Having referred to the respective contentions of the parties, this Court is of the opinion that there is repeated and callous negligence/inaction on the part of the appellant/R3 insurance company. The first aspect of negligence/inaction lies in the fact that the appellant/R3 did not chose to file a written statement denying the insurance policy claimed by the R1/claimant, despite the fact that it entered appearance before the Tribunal through Adv.K.M.Mathew, as revealed from the records. The appellant/R3 remained a silent spectator until the culmination of the entire proceedings before the Tribunal, resulting in the impugned award.

8. The second phase of negligence/inaction of the appellant/R3 is obvious from the fact that a review petition was filed by the appellant/R3 before the Tribunal vide I.A No.537/2010 only after a lapse of more than three years from the date of award. While

dismissing the review petition, the Tribunal found that the said delay is not explained at all. The fact that the appellant/R3 did not file any written statement disputing their liability was also taken note of in the order dated 13.10.2010 dismissing the review.

9. The third phase of negligence surfaced from the fact that no immediate action was taken by the appellant/R3 after dismissal of the review petition. It took another three years and almost eight months for the appellant/R3 to prefer the instant appeal on 17.6.2014. As rightly pointed out by the learned counsel for the first respondent/claimant, there is a delay of more than eight years in preferring the instant appeal reckoned from the date of award. It is one thing to take note, as canvassed by the learned counsel for the appellant/R3, that as per order dated 13.1.2017, the huge delay stood condoned upon payment of a cost of Rs.2,000/-. However, it is different altogether and all the more significant

to note that such condonation of delay would not efface off the prejudice, hardship and jeopardy caused to the first respondent/claimant. Having met with an accident in the year 1995, the first respondent/claimant was favoured with the impugned award in the year 2005. However, it is an extremely sad state of affair that he could not reap the fruits of the award even in the year 2022, which is solely attributable to the negligence/latches/ inaction on the part of the appellant/R3 in seeking proper remedies at appropriate time. This Court perfectly agree with the proposition that in the absence of a valid policy, the appellant/R3 cannot be mulcted with liability to pay compensation to the first respondent/claimant. However, the fact that it took more than eight years for the appellant/R3 to deny the policy, as also, the liability, is something which cannot be brushed aside lightly, for, the same had resulted in serious consequences and prejudice to the first respondent/ claimant. This Court is therefore of the opinion that even when the appeal is to be

allowed, the first respondent/claimant should be compensated in order to balance the equities. This Court is of the opinion that the panacea to ills of the above nature, as demonstrable from the conduct of the appellant, is to mulct the erring party with realistic cost. **Mohanlal Aggarwal v. Atinder Mohan Khosla [(2004) 3 SCC 437]** is an authority for the proposition that even when an appeal is allowed, heavy costs can be imposed for the objectionable conduct of the appellant.

10. In the result, this appeal is allowed and the impugned award is set aside, subject to the condition that the appellant/R3 pays a cost of Rs.20,000/- to the first respondent/claimant within a period of 45 days from the date of receipt of a copy of this judgment. Once the payment as directed is effected, the case will stand remanded to the Tribunal for consideration, in accordance with law. It will be open for the first respondent/claimant to implead the proper insurance company as an additional respondent. The Tribunal is directed to

expedite the proceedings and to pass an award as early as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment.

11. As regards the claim of the first respondent/claimant for the benefit of the proviso to Section 21 of the Limitation Act, ordinarily this Court would have directed the Tribunal to decide the same. However, taking into account the checkered history of this case, and the time lost by the first respondent/ claimant, entailing serious prejudice/ hardship, this Court is of the opinion that the said issue also has to be settled by this Court now.

12. Ordinarily, going by Section 21 of the Limitation Act, the proceedings as regards the additional respondents sought to be impleaded will be deemed to have been instituted only when such respondent is made a party. However, the proviso to Section 21 contemplates that where the court is

satisfied that the omission to include a party was due to a mistake made in good faith, the court can direct that the suit as regards such new party shall be deemed to have been instituted on an earlier date. This Court is of the opinion that the first respondent/claimant is well within his limits in embarking on the proviso to Section 21, since the appellant/R3 was made a party acting under a *bona fide* mistake. It was in good faith that the appellant/R3 was made a party on the belief that the vehicle in question was covered by a policy issued by the appellant/insurance department. In such circumstances, this Court is of the view that the first respondent/claimant is entitled to the benefit of the proviso to Section 21 and he, in the overall facts and circumstances, is liable to be protected against the plea of limitation.

13. However, this Court is of the view that the insurance company which is going to be impleaded should not be mulcted with the responsibility of payment of interest for the award amount from the

date of petition up to the date of impleadment. In the estimation of this Court, the interest component pertaining to the said period has to be borne by the second respondent/owner of the vehicle, who was equally negligent and callous in admitting the policy with the appellant/R3 in her written statement. This Court may observe that the second respondent/owner had also contributed to the hardship and prejudice caused to the first respondent/claimant. Had the second respondent/ owner been diligent to ascertain its policy and to state correct and true facts in her written statement, the first respondent/claimant would not have been put to the present predicament. In mulcting the liability of interest component for the period afore referred on the second respondent/owner, this Court garner support from the concept of joint and several liability of the owner and the insurer.

14. It is clarified that there is no challenge, whatsoever, with respect to the compensation amount

granted in the impugned award. The scope of remand is limited to the question whether there exists a valid policy, insuring the vehicle in question at the relevant period with the party respondent sought to be impleaded and affording an opportunity to such party to put forth its defence, if any. Opportunity for evidence, if any, to be adduced by the impleading respondent also has to be afforded. The parties shall appear before the Tribunal on 30.11.2022, if the cost directed above is paid.

15. The appeal is allowed as indicated above. Deposit of Rs.14,000/- made as a pre-condition for filing the appeal be refunded to the appellant.

Sd/-

C.JAYACHANDRAN
JUDGE

jg