

Kerala High Court

National Insurance Company Ltd vs Anirudhan @ Anilkumar on 16 November, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

MACA.No. 1530 of 2008()

1. NATIONAL INSURANCE COMPANY LTD.,
... Petitioner

Vs

1. ANIRUDHAN @ ANILKUMAR, AGED ABOUT 34
... Respondent

2. BALAN, S/O.AYYAPPAN, THENNATTIL,

3. M.J.AMBROSE, AGED ABOUT 37 YEARS,

For Petitioner :SMT.RAJI T.BHASKAR

For Respondent :SRI.K.I.ABDUL RASHEED

The Hon'ble MR. Justice M.N.KRISHNAN

Dated :16/11/2009

O R D E R

M.N. KRISHNAN, J.

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M.A.C.A. NO. 1530 OF 2008

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Dated this the 16th day of November, 2009.

J U D G M E N T

This appeal is preferred against the award of the Motor Accidents Claims Tribunal, North Paravur in O.P.(MV)212/03. The claimant, a pillion rider sustained injuries in a road accident and the Tribunal has awarded a compensation of Rs.63,200/- and made the insurance company liable to pay the amount. Aggrieved by that decision the insurance company has come up in appeal.

2. Heard the learned counsel for the insurance company as well as the counsel for R1 and R2. Learned counsel for the insurance company very strongly contends before me that the status of the person riding as a pillion rider is that of a gratuitous passenger and unless an additional premium is paid to cover that liability the insurance company will not be liable to pay the amount in M.A.C.A. 1530 OF 2008 the light of the principles laid down in Tilak Singh's case [United India Insurance Co. Ltd. v. Tilak Singh)2006 (2) KLT 884(SC).

On the other hand counsel for R1 and R2 would submit that it is a comprehensive policy and therefore the conditions of the policy cover the risk of pillion rider and therefore the insurance company is liable to pay the amount. We have come across conditions of comprehensive or package policies in very many cases which contain a clause II(i) to the effect that in case of death or bodily injury of a person carried on a motor vehicle other than for hire or reward, is undertaken to be covered by the terms and conditions of the policy. We also find a clause after 2001 onwards "except the liability under the M.V.Act". Both these clauses have come up for interpretation before two Division Benches of this Court reported in New India Assurance Co. Ltd. v. Hydrose (2008 (3) KLT 778) and Mathew v. Shaji Mathew (2009 (3) KLT 813). In both these decisions the Court considered and held that when there is a condition in the M.A.C.A. 1530 OF 2008 policy which undertakes the risk of a person carried in a motor vehicle by virtue of the terms and conditions of the contract the insurance company is liable to pay and in such cases additional premium is not to be collected for the purpose of coverage of a passenger. So in the light of the two authoritative pronouncements of this Court since the policy concerned is a comprehensive or a package policy as it contains the conditions as usual, it has to be held that the insurance company is liable to be affixed with the liability to pay the compensation. Therefore on different reasons I sustain the finding of the Motor Accidents Claims Tribunal. Therefore the appeal lacks merit and the same is dismissed.

M.N. KRISHNAN, JUDGE.

ul/-