



2025:KER:52824

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

THURSDAY, THE 17TH DAY OF JULY 2025 / 26TH ASHADHA, 1947

WA NO.476 OF 2023

ARISING OUT OF THE JUDGMENT DATED 14.10.2022 IN WP(C)
NO.21669 OF 2012 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

NATIONAL INSURANCE CO.LTD.
THIRUVANANTHAPURAM, REPRESENTED BY ITS ASSISTANT
MANAGER, REGIONAL OFFICE, KOCHI, PIN - 682015

BY ADVS.
SRI.GEORGE A.CHERIAN
SRI.JACOB MATHEW KAITHALIL
SRI.GEORGE CHERIAN (SR.)

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY,
FINANCE DEPARTMENT,
THIRUVANANTHAPURAM, PIN - 695011
- 2 INSURANCE OMBUDSMAN
PUNLINAT BUILDING, OPPOSITE COCHIN SHIPYARD,
M.G.ROAD, ERNAKULAM, PIN - 682015
- 3 DIRECTOR
KERALA STATE INSURANCE DEPARTMENT,
HOUSING BOARD JUNCTION,
THIRUVANANTHAPURAM, PIN - 695011



2025:KER:52824

4 SMT.HAIRUNISSA M.U.
 KALAKAT HOUSE, CHEMBUCHIRA POST KORECHAL
 THRISSUR, PIN - 680684

BY ADV. SRI.AJAYA KUMAR. G. , R4
SRI.SUNIL KUMAR KURIAKOSE, GOVT.PLEADER, R1 & R3

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
02.07.2025, THE COURT ON 17.07.2025 DELIVERED THE
FOLLOWING:



JUDGMENT

Dated this the 17th day of July, 2025

Syam Kumar V.M., J.

This appeal is filed challenging the judgment dated 14.10.2022 of the learned Single Judge in W.P.(C) No.21669 of 2012. Appellant was the petitioner in the said W.P.(C), and respondents were the respondents therein.

2. The Writ Petition was filed seeking to quash Ext.P9 award dated 03.01.2012 of the Insurance Ombudsman, Kochi, in Complaint No.IO/KCH/GI/11-003-986/2010-11. The Ombudsman vide the said order directed the appellant Insurance Company to pay an amount of Rs.7,00,000/- to the 4th respondent, towards the sum insured under a group insurance policy covering her husband, who had died in an accident.

3. The brief facts pertaining to the subject matter are as follows :

The husband of the 4th respondent, K.S.Shibu, was a Lascar in the Irrigation Department of the Government of Kerala. He had been covered under a Group Personal Accident Policy (GPA policy)



issued by the appellant Insurance Company to cover Government employees and teachers. On 19.05.2009, the petitioner's husband died of injuries suffered in a motor vehicle accident involving a collision between the motorcycle driven by him and a tourist bus. The 4th respondent preferred a claim with the appellant insurer invoking the policy. The claim was rejected by the appellant insurer, stating that the same is hit by a clause in the policy which stipulated that death occurred while the deceased was under the influence of intoxicating liquor or drugs will be an exclusion of liability. The repudiation of the claim was challenged by the 4th respondent before the Insurance Ombudsman. After hearing both sides, the Ombudsman rendered the impugned order *inter alia* holding that the 4th respondent is entitled to an amount of Rs.7,00,000/- from the appellant insurer. Challenging the said order of the Ombudsman, the appellant Insurance Company had preferred the Writ Petition, which was dismissed by the learned Single Judge by the judgment impugned in this appeal.

4. Heard Sri.George A.Churian, Senior Advocate, instructed by Smt.Susan George, Advocate, for the appellant and Sri.Sunil Kumar Kuriakose, learned Senior Government Pleader for R1 and R3.



Notice to the 2nd respondent, Insurance Ombudsman, was dispensed with. Though service was completed against the 4th respondent, there was no appearance on her behalf.

5. Learned Senior Counsel appearing for the appellant contended that the learned Single Judge had erred in dismissing the Writ Petition and had failed to properly appreciate the law governing the terms of the policy of the insurance. It is contended that the rights and liabilities under an insurance policy are determined based on the terms of the policy and that such terms are to be strictly construed. The terms of the policy (Ext.P1), as well as the relevant Memorandum of Understanding (Ext.P2) clearly excluded any liability to pay under the policy when death or disability arises whilst under the influence of intoxicating drugs or alcohol. The learned Single Judge had erred in taking note of the same. It is contended that while interpreting a contract of insurance, the terms and conditions thereof are to be interpreted strictly. The words in an insurance contract must be given paramount importance and should be interpreted as expressed without any addition, deviation or substitution. The learned Single Judge, following the said settled legal position, ought to have set aside the order of the Insurance



Ombudsman. The policy having specifically excluded compensation for death or disability arising out of or whilst under the influence of intoxicating drugs or alcohol, no amount could have been directed to be paid. Based on Ext.P5 chemical analysis report, it is further submitted that the blood sample collected contains ethyl alcohol 154.79 mgs. per 100 ml. blood. Based on Section 185 of the Motor Vehicles Act, 1988, it is contended that driving a vehicle by a drunken person is an offence and that as per Ext.P5 chemical analysis report, the deceased had more than five times the relevant limit of ethyl alcohol in his body at the time of the accident. The same could only lead to the conclusion that at the time of the accident, he was not only under the influence of alcohol, but also was engaged in committing a breach of law with criminal intent. The learned Single Judge had overlooked the said aspects. The reasoning of the learned Single Judge that there was nothing to show negligence or contributory negligence on the part of the deceased leading to the accident, it is contended by the learned Senior Counsel, has no relevance while deciding the exclusion clause in the policy. The question of negligence is not a matter to be decided while interpreting the policy clause, as in a motor accident



case. To establish that there was acute alcohol intoxication and to prove that the vehicle was driven by a person under the influence of alcohol, the insurer doesn't need to establish anything more than the high alcohol content in the bloodstream. The nature of the accident, the degree of negligence/contributory negligence etc. are alien when comes to considering the liability under a personal accident policy. Under such a policy as the one at hand, all that is required for the insurer to show is that at the time of the accident, the driver was under the influence of alcohol. Such a conclusion could clearly be formed from the Chemical Analysis report. The finding of the learned Judge that a person who has consumed alcohol in excess of the limit and remains sober cannot be said to be under the influence of alcohol, so as to contribute to the road accident, is unsustainable, perverse and illegal. The finding of the learned Judge that Exception 5(b) of Ext.P1 insurance policy and Clause 4 of Ext.P2 Memorandum of Understanding would come into play to the detriment of the insured only if the accident had occurred due to any contributory factor referable to the insured consequent to or under the influence of alcohol is also perverse and illegal. It is also contended that the appellant insurer has no liability to pay interest



2025:KER:52824

under the policy and the Insurance Ombudsman has no power to award interest. Reliance is placed by the learned Senior Counsel on the dictum laid down by the Hon'ble Supreme Court in **Iffco Tokio General Insurance Company Ltd. v. Pearl Beverages Ltd.** [(2021) 7 SCC 704] to contend that in the case of a comprehensive insurance policy wherein there is an exclusion clause regarding re-driving "under influence of an intoxicating liquor", to exclude the liability of an insurer by invoking the said exclusion clause, it must be shown in the facts and circumstances of the case that the consumption of liquor had if not caused the accident which undoubtedly would bring the accident within the mischief of the clause, but at least contributed in a perceptible way causing the incident. Reliance is also placed on the dictum laid down by the Hon'ble Supreme Court in **General Assurance Society Ltd. v. Chandmull Jain and another** (AIR 1966 SC 1644) wherein it had been laid down by the Hon'ble Supreme Court that in interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract however reasonable, if the parties have not made it themselves.



Reference is also made to the dictum laid down by this Court in **Sreedevi M. v. State of Kerala** (2024 KHC OnLine 108) and **National Insurance Company Ltd. v. State of Kerala** (2024 KHC OnLine 667), so as to buttress the contentions put forth on behalf of the appellant. The learned Senior Counsel thus prays that the judgment of the learned Single Judge may be set aside.

6. Per contra, the learned Government Pleader submits that the judgment of the learned Single Judge is legal and valid and calls for no interference at all. It is submitted that a Chemical analysis report cannot be the sole document on which the question whether the insured would fall within the exceptions/exclusion clause 5 (b) in the insurance policy should be decided. Reliance is placed on the dictum laid down in **Babu K. and another v. Union of India** (2017 (4) KHC 137) wherein it was held that the meaning of intoxication does not take in mere consumption of alcohol or liquor and the same is not all sufficient to bring a person under the exception of intoxication. Thus, the learned Government Pleader contends that the Writ Petition is only to be dismissed.

7. We have heard both sides and have considered the contentions put forth. The precedents relied on by both sides have



also been taken note of. The question to be considered is whether the learned Single Judge erred in rendering the impugned judgment and in appreciating the contentions put forth by the appellant Insurance Company, especially regarding the invocation of the exception clause in the policy. The relevant clause reads as follows:

Exceptions:

Provided always that the company shall not be liable under this policy for:

1. XXX
2. XXX
3. XXX
4. XXX
5. Payment of compensation in respect of Death or Disablement of the insured person.
 - (a) From intentional self-injury, suicide or attempted suicide.
 - (b) **Whilst under the influence of intoxicating liquor or drugs.**
 - (c) XXX
 - (d) XXX
 - (e) XXX

The learned Single Judge had concluded that, except for the



Ext.P5 chemical analysis report, there had been no evidence tendered to unequivocally conclude whether the deceased was under the influence of intoxication of alcohol during the relevant time. The burden of proving the same was squarely upon the Insurance Company. Only if the relevant circumstances are satisfactorily proved would the exception/exclusion clause come into effect. That there was intoxication has to be proved unequivocally. The sole reliance placed on Ext.P5 chemical analysis report to show that there had been a substantial quantity of alcohol in the bloodstream of the deceased would not by itself prove that the deceased was under the influence of intoxicating alcohol as required by the relevant policy exception clause.

8. When an insurer proceeds to include an exception clause in the policy to exclude coverage for accidents occurring under the influence of intoxicating liquor/ alcohol, the onus is on the insurer to demonstrate the actual impairment of faculties due to intoxication. That alone would trigger the exception clause. It has to be proved through a process known to law that the insured was intoxicated and that the incident happened due to intoxication. Evidence regarding the mere presence of alcohol would not suffice



to exclude the insurer from liability.

9. In the case at hand, it is relevant to note that the policy term does not say that the exception would apply upon the presence of alcohol in the blood. What is required for the exclusion to be triggered is that the death or disablement of the insured person had occurred whilst he was under the 'influence of intoxicating liquor/alcohol'. The clause thus mandates that intoxication needs a factual analysis and confirmation, which, as rightly concluded by the learned Single Judge, is absent in the case at hand. That the deceased was under the influence of alcohol had not at all been proved, and the finding to the said effect arrived at by the Ombudsman as well as by the learned Single Judge cannot be found fault with. The purported reliance placed on the provisions of the Motor Vehicles Act does not help the case of the appellant in so far as the same would only lead to a penalty as envisaged under the said statute. The precedents relied on by the appellant also do not apply to the facts and circumstances of the case in so far as the wordings of the policy are specific and the same have not been buttressed by satisfactory evidence. Given the above, we do not find that the learned Single Judge had erred or that the judgment



2025:KER:52824

rendered is perverse or illegal.

We see no reason to interfere with the judgment of the learned Single Judge. The Writ Appeal is dismissed. No costs.

Sd/-

**SUSHRUT ARVIND DHARMADHIKARI
JUDGE**

Sd/-

**SYAM KUMAR V.M.
JUDGE**

csI