IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 21ST DAY OF MAY 2019 / 31ST VAISAKHA, 1941

MACA.No. 2017 of 2013

AGAINST THE AWARD IN OPMV 2196/2008 of MOTOR ACCIDENT CLAIMS TRIBUNAL ,ERNAKULAM DATED 22-06-2013

APPELLANT/PETITIONER:

SMT.PRASANNA.B
AGED 53 YEARS, W/O.ARAVINDAKSHAN, MARUVELICHIRA VEETIL, EDACOCHIN, COCHIN -6.

BY ADV. SRI.K.JANARDHANAN

RESPONDENTS/RESPONDENTS:

1 **KABEER.P.K.**
S/O.KOSU, 9/135, PUTHENPURAKKAL HOUSE, NETTOOR, MARADU, ERNAKULAM 682 304.

2 **ICICI LOMBARD MOTOR INSURANCE CO. LTD.**
ZENITH HOUSE, KESHAVARAO KHADE MARG, OPP. TO RACE COURSE, MAHALAKSHMI, MUMBAI - 34.

BY ADVS.
SRI.R.AJITH KUMAR (128/84)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 21.05.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

M.A.C.A No.2017 of 2013

J U D G M E N T

The claimant in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal in exonerating the insurer of the vehicle from the liability to indemnify its owner.

2. The claimant sustained injuries in a motor accident took place on 12.08.2008. The insurer of the vehicle contested the claim petition contending that they are not liable to indemnify the owner, as the cover note issued by them for the vehicle on 16.05.2008 was cancelled on 23.05.2008, when the cheque issued by the owner towards the premium of the policy was dishonoured. The Tribunal accepted the case of the insurer and exonerated them from the liability holding that the vehicle was not covered by a policy at the time of accident. It is the said decision of the Tribunal that is under challenge in this appeal preferred by the claimant.

3. Heard the learned counsel for the appellant as also the learned counsel for the insurer.

4. The learned counsel for the appellant contended that the cover note which was as good as a policy issued by the insurer for

the vehicle on 16.05.2008 was valid till 15.05.2009 and since the accident took place within the said period, the Tribunal ought not have exonerated the insurer from the liability. It was pointed out by the learned counsel that in so far as the issuance of the cover note is admitted by the insurer, its cancellation and the intimation thereof to the owner should have been established by the insurer to claim exoneration from the liability. According to the learned counsel, the insurer has not established that the cancellation of the cover note was intimated to the owner.

5. Per contra, the learned counsel for the insurer contended that an award exonerating the insurer from the liability can be challenged only by the owner of the vehicle who would be consequently liable to pay compensation to the claimant. According to the learned counsel, the claimant cannot be said to be a person aggrieved in terms of Section 173 of the Motor Vehicles Act, 1988 (the Act) to prefer an appeal challenging the award in such cases. In other words, according to the learned counsel, the appeal is not maintainable. On facts, it was contended by the learned counsel that the insurer has established before the Tribunal that they have sent a communication to the owner informing him about the cancellation of the cover note, under certificate of posting. Placing reliance on the Full Bench decision of this court in **Prasanna** v **Kabeer** (2018 (4) KLT

722), the learned counsel submitted that in the absence of any evidence to the contrary, the same is presumed to have been received by the owner. It was the contention of the learned counsel that the owner has not established that he has not received the communication sent by the insurer in this connection and the Tribunal cannot, therefore, be found fault with for having exonerated the insurer from the liability.

6. I have given a thoughtful consideration to the submissions made by the learned counsel on either side.

7. I shall first deal with the contention taken by the learned counsel for the insurer as to the maintainability of the appeal. The contention is seen taken in the light of the expression 'any person aggrieved by an award' contained in sub section (1) of Section 173 of the Act. True, if the insurer in the proceedings is exonerated from the liability, the owner would be liable to pay compensation to the claimant. But, that does not mean that only the owner would be aggrieved in such cases. In a case where the owner pays to the claimant the compensation directed to be paid or where the claimant would be in a position to realise the compensation from the owner without much difficulty, the claimant may not be aggrieved by the award. But, in cases where the claimants are not in a position to realise the compensation from the owners, they would certainly be

aggrieved by the award. Even in cases where the claimants would be in a position to realise the compensation from the owners, it is common knowledge that it would be a cumbersome effort for the claimants to realise the compensation from them, while insurers would deposit the compensation payable to the claimants by default, in cases where they have liability. In the above circumstances, it cannot be said that the legislature intended to deprive the claimants in proceedings before the Motor Accidents Claims Tribunal a right of appeal for challenging the award exonerating the insurer from the liability to indemnify the owner. If the contention taken by the insurer is accepted, in cases where the Tribunal exonerates the insurer from the liability erroneously and the owner who is consequently made liable is not aware or otherwise prevented by circumstances from preferring an appeal challenging the exoneration of the insurer, the victim might be deprived of compensation which he/she is entitled for the loss caused on account of the accident. Such an interpretation of Section 173, according to me, would go against the social welfare provisions contained in Chapter XI of the Act. The contention taken by the learned counsel for the insurer as regards the maintainability of the appeal is, therefore, rejected.

8. Coming to the merits, the fact that the insurer has issued a cover note on 16.05.2008 for the vehicle valid for a period of

one year is not disputed. It is settled that the liability of the insurer to indemnify third parties subsists unless the insurance coverage is cancelled by the insurer and an intimation thereof has reached the insured and the registering authority [See **Prasanna** v **Kabeer** (2018 (4) KLT 722)]. The contention of the insurer is only that the cover note issued on 16.05.2008 was cancelled on 23.05.2008 and the said fact was intimated to the owner and therefore, there was no policy for the vehicle on the date of the accident. The question falls for consideration is whether the cancellation of the cover note was intimated by the insurer to the owner. The case of the insurer is that the cancellation of the cover note was intimated by them to the owner by Ext.B3 communication sent under certificate of posting. Ext.B3 is a communication addressed by the insurer to the owner intimating him about the cancellation of the cover note. In order to establish that the said document was sent under certificate of posting, the insurer has produced along with Ext.B3, a certificate to that effect issued from Mumbai Post Office on 31.05.2008. If the said certificate is one issued in respect of Ext.B3, in the light of the Full Bench decision of this Court in **Prasanna,** the insurer is certainly entitled to contend that the document must be presumed to have been received by the owner. As clarified by this court in the said case, as in the case of a postal article sent by registered post, the presumption aforesaid is a rebuttable one.

The finer question therefore is as to whether the owner has rebutted the presumption as to the receipt of the communication sent under certificate of posting. It is seen that the owner has specifically contended in the written statement filed by him that he has not received any communication from the insurer regarding the cancellation of the cover note. He has given evidence also to that effect before the Tribunal as RW1. He has stated in his evidence as RW1 that he was not aware of the dishonour of the cheque and the cheque was issued with sufficient money in the account. In cross-examination, the owner has stated that he has taken a new policy after the accident. The Tribunal took the view that as the owner has admitted that he has taken a new policy after the accident, he cannot be heard to contend that he was not aware of the cancellation of the policy. It is on that basis the Tribunal has exonerated the insurer from the liability. I am unable to accept the said approach made by the Tribunal. Even the presumption attached to the delivery of an article sent by registered post in terms of Section 27 of the General Clauses Act, 1897 can be rebutted by the addressee by appearing before the court as a witness and stating that he has not received the article. The burden would then shift to the party who wants to rely on the presumption to satisfy the court by leading oral or documentary evidence to prove the service of such article on the addressee [See

Green View Radio Service v. **Laxmibai Ramji** [(1990)4 SCC 497] and **Kulkarni Patterns Pvt. Ltd.** v. **Vasant Baburao Ashtekar** [(1992) 2 SCC 46]. This rebuttal of the presumption drawn against the addressee would, of course, depend on the veracity of the statement of the party. The court, in the facts and circumstances of a particular case, may not consider such denial by the addressee as reliable and in that case, such denial alone would not be sufficient. But if there is nothing to disbelieve the statement of the addressee, then it would be sufficient rebuttal of the presumption of service of such article sent to him. Though the owner has given evidence before the Tribunal to the effect that he did not receive Ext.B3 communication, no evidence was let in by the insurer to prove the receipt of Ext.B3 communication by the owner. The question, therefore, is as to whether the statement made by the owner in this case can be accepted as reliable. At the outset, it has to be noted that the premium of the policy was only about Rs.1000/- and under normal circumstances, there is no reason for a person who issues a cheque for the said amount, that too, for obtaining a policy of insurance for his vehicle, to cause the same to be dishonoured. As such, the possibility of the owner being not aware of the bouncing of the cheque issued to the insurer for the said purpose cannot be ruled out. This may be a case where the owner must have realised about the dishonour of the

cheque at the time of accident and that might be the reason for obtaining a fresh policy for the vehicle. As such, merely for the reason that the owner has admitted that he has taken a policy after the accident, according to me, it cannot be said that the evidence tendered by the owner is not reliable and it has to be presumed that he was aware of the cancellation of the policy. In other words, I have no difficulty in arriving at the conclusion that the owner has rebutted the presumption as to the receipt of the communication claimed to have been sent by the insurer under certificate of posting. In that event, it was obligatory for the insurer to prove the service of the postal article claimed to have been sent by them to the owner. As the insurer has not established the said fact, according to me, the Tribunal was not justified in exonerating the insurer from the liability.

In the result, the appeal is allowed and the award impugned in the appeal in so far as the same exonerates the insurer from the liability to indemnify the owner is vacated.

Sd/-

P.B.SURESH KUMAR

Mn

JUDGE