

National Insurance Co.Ltd Vs Imran Umar Muhammed

Court: High Court Of Kerala

Date of Decision: Feb. 3, 2025

Acts Referred: Indian Penal Code, 1860 " Section 465, 468, 471
Motor Vehicles Act, 1988 " Section 147(3), 149

Hon'ble Judges: Johnson John, J

Bench: Single Bench

Advocate: Jayakumar Namboodiri T.V, T.Krishnanunni, George A.Churian, George Churian

Final Decision: Dismissed

Judgement

Johnson John, J

1. The appellant insurance company filed this review petition against the judgment dated 20.05.2024 in M.A.C.A. No. 769 of 2024.

2. The above appeal was filed by the insurance company challenging the award in O.P.(MV) No. 2230 of 2019 on the file of the Motor Accident

Claims Tribunal, Perumbavoor. The claim petitioner was a minor aged 10 years at the time of occurrence and according to the claim petitioner, on

16.11.2019, while he was standing on the side of the road, car driven by the 2nd respondent in a rash and negligent manner caused to hit him and

thereby, he sustained serious injuries.

3. Before the Tribunal, the owner and driver of the offending vehicle were ex parte and the insurance company contended that the offending vehicle

was insured with the company for the period from 04.01.2018 to 03.01.2019 and the company has not issued any policy covering the date of the

accident. It is further contended that the policy produced by the petitioner covering the period from 04.01.2019 to 03.01.2020 is not a genuine policy

and that it is a fake policy.

4. Before the Tribunal, Exhibits A1 to A14 were marked from the side of the claim petitioner. From the side of the insurance company, RW1

examined and Exhibits B1 and C1 were marked. The Tribunal recorded a finding that Exhibit A14 policy is seen issued by Maruti Booking Company,

an authorized agent of the insurance company and that the insurance company has not initiated any steps to find out the foul play committed in

connection with the policy. The Tribunal also found that the insurance company has not taken any action against the owner of the vehicle in

connection with Exhibit A14 policy produced before the Tribunal and that if Exhibit A14 is a fake policy, it is the duty of the insurance company to

prove the same and for the said reasons, recorded a finding that respondents 1 to 3 are jointly and severally liable to pay compensation to the claim

petitioner.

5. As per the judgment dated 20.05.2024 in M.A.C.A. No. 769 of 2024, this Court confirmed the findings of the Tribunal regarding the liability of the

insurance company and dismissed the appeal in limine.

6. Heard Sri. George Cherian, the learned Senior counsel for the review petitioner and Sri. T. Krishnanunni, the learned Senior counsel for the first

respondent.

7. The learned counsel for the review petitioner argued that the appeal was dismissed in limine without properly appreciating the contentions raised by

the appellant regarding the genuineness of Exhibit A14 and the fraud played in the case. It is also argued that this Court has not gone into the merits of

the case and therefore, there is error apparent on the face of the record.

8. The learned counsel for the respondent/claim petitioner argued that a perusal of paragraphs 7, 8 and 9 of the judgment of this Court dated

20.05.2024 would show that this Court has considered the contentions of the appellant regarding the alleged foul play behind creation of Exhibit A14

policy and also recorded a finding that the insurance company has a bounden duty to conduct a discrete enquiry when the factum of issuance of a

fake policy came to its notice and the company failed to do so and allowed the fake policy to exist and caused its production by the petitioner before

the Tribunal and therefore, the insurance company cannot escape from its liability to indemnify the insured.

9. The Honourable Supreme Court in *Rajender Kumar v. Rambhai* [(2007) 15 SCC 513 = 2002 ICO 6370] held thus:

“The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of

the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be

disturbed.”

10. In *Asmath Khan v. Chadrahasa Bangara* [2006 (4) KLT 494], a Division Bench of this Court held that even though there is power to review in

appropriate circumstances in the interest of justice, the Tribunal has no power to sit in appeal over its own award in the guise of review and that the

review proceedings are not equivalent to an appeal or revision and a review petition can be entertained only on the ground of error apparent on the

face of record.

11. The specific case of the review petitioner is that Exhibit A14 is a fake policy manipulated to cover the period of accident and that the Tribunal has

recorded a finding that the policy number, cheque number and invoice number are one and the same in Exhibits B1 and A14 policies and the same

would show that Exhibit A14 is a fake policy. In the appellate judgment, this Court recorded a specific finding in paragraph 9 that the insurance

company, despite being aware about the fake policy in 2020-2021 itself, failed to take any action against any person in this regard and thereby, allowed

the fake policy to exist and its production before the Tribunal and therefore, the company cannot escape from its liability.

12. The learned counsel for the respondent/claim petitioner cited the decision of the Rajasthan High Court in HDFC ERGO General Insurance Co.

Ltd. v. Nimaji and Others [2017 KHC 7536] to show that the burden is on the insurance company to prove that the insurance policy produced on

record is fake. In Ravi V. v. New India Assurance Company Ltd. and Others [1997 KHC 1990] ,a Division Bench of the Calcutta High Court

held that a third party claimant is not concerned with the dispute between the insurer and the insured and in view of Section 149 of the Motor Vehicles

Act, 1988, the insurer is under a statutory obligation to indemnify the owner of a vehicle after a certificate of insurance has been issued under sub-

Section 3 of Section 147 of the said Act. In the said decision, it was also held that if the certificate of insurance was wrongly granted either by reason

of any mistake or fraud committed by either of the parties or by its officers, the remedy of the insurance company is to initiate a separate proceedings

for realisation of the amount so paid by it from the owner of the vehicle.

13. The review petitioner filed I.A. No. 1 of 2025 to receive Annexure A3 final report in Crime No. 1117 of 2023 of Perumbavoor Police Station. In

the affidavit filed in support of the said petition, it is stated that the police filed a final report on 21.12.2023 chargesheeting one Adarsh M.S., S/o.

Sahadevan under Sections 465, 468 and 471 IPC for fabricating Exhibit A14 policy and that the petitioner obtained a copy of the final report only

recently. Annexure A3 final report shows that the crime was registered only on 22.08.2023 ie., after the award of the Tribunal and further, the

accused in the said case is not a party in the claim petition and therefore, I find that the said document cannot be received as an additional evidence in

this review petition and hence, I.A. No. 1 of 2025 is dismissed.

14. It is well settled that a third party claimant is not concerned with the dispute between the insurer and the insured and the burden is on the

insurance company to prove that the policy of insurance produced on record is fake and in this case, the finding of the Tribunal that the insurance

company failed to initiate any proceedings against any person in this connection and thereby, allowed the fake policy to exist and its production before

the Tribunal, is confirmed in appeal and in view of the discussion in paragraphs 7 to 9 of the judgment in appeal, I find that there is no error apparent

on the face of the record and therefore, the review petition is liable to be dismissed.

In the result, this review petition is dismissed.