A NATIONAL INSURANCE CO. LTD.

V.

SEBASTIAN K. JACOB

Civil Appeal No. 1748 of 2009

MARCH 20, 2009

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[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

Motor Vehicles Act, 1988 – Motor accident – Motor Accident Tribunal awarding compensation – Insurance C *company denying its liability on the ground that the claimant was already compensated by another Insurance Company for the same cause of action – Earlier payment not disputed – Award upheld by High Court – Insurance Company agreeing to pay the difference between amount claimed and the amount* D *already paid – Held: As the claim is for the whole amount and not for the difference of amount, matter remitted to High Court to reconsider the matter.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1748 of 2009

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From the Judgement and Order dated 06.02.2006 of the Hon'ble High Court of Kerala at Ernakumal in MFA No. 20 of 2003.

M.K. Dua, Kishore Rawat, Dhiraj, for the Appellants.

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The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

G 2. The controversy lies within a very narrow compass. The appellant had filed appeal before the Kerala High Court questioning the correctness of a judgment rendered by Motor Accident Claims Tribunal, Thalassery. The award was passed

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in favour of the respondent allowing him to realize a sum of Rs.24,033/- with interest with proportionate cost from the driver, owner and present appellant jointly and severally payable by the present appellant. According to the appellant, the insurer is not liable to make the payment since the claimant is already compensated by another Insurance Company by paying Rs.21,700/- for the same cause of action consequent to the same accident. Therefore, it was submitted that the respondent was not entitled to double payment of compensation. The High Court did not accept the plea and upheld the award of MACT.

3. Learned counsel for the appellant submitted that in respect of the very same claim, the matter was settled by another Insurance Company. It was accepted by the claimant that he had settled his claim with the insurer of the jeep. But according to him that is of no consequence and did not debar him from making a claim under the statutory liability against the tortfeasor. Learned counsel for the appellant submitted that there cannot be double benefit in respect of the same accident. The claimant had accepted that he had settled the matter and received the money in respect of the jeep in question. There was no scope for granting a further relief.

4. There is no appearance on behalf of the respondent.

5. It conceded that if there is difference of amount the appellant has to pay the same, but that is not the case in the present scenario. The claimant claims the whole amount. The earlier payment is not disputed. In fact, the Oriental Insurance Company Ltd. has clearly accepted that the vehicle collided with the stage carriage on 13.7.1995 and the damage claim was settled for Rs.21,700/- on 6.12.1995. The High Court does not appear to have considered this aspect in the proper perspective. Therefore, we set aside the impugned order of the High court and remit the matter to it for fresh consideration.

6. The appeal is allowed.

K.K.T. Appeal allowed.