IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 14TH DAY OF JULY 2023 / 23RD ASHADHA, 1945

WP(C) NO. 20785 OF 2006

PETITIONEr:

NAZIA HASSAN D/O.HASSAN,
CHATHAMKULAM HOUSE, CHITTANDA AMSOM AND DESOM,CHITTANDA P.O.,,VADAKKANCHERY,
THALAPPILLY TALUK,,THRISSUR DISTRICT.

BY ADVS.
SRI.K.S.BABU
SMT.SANAFAR ARAKKAL
SMT.N.SUDHA
SMT.C.SEENA

RESPONDENTS:

1 THE BRANCH MANAGER,
ORIENTAL INSURANCE CO.LTD.,
BRANCH NO.2,, K.P.NAMBOOTHIRIS SHOPPING COMPLEX,,
THRISSUR-680 001.

2 THE INSURANCE OMBUDSMAN, KOCHI, OFFICE OF THE INSURANCE OMBUDSMAN,,
PULINAT BUILDING, 2ND FLOOR,
OPP.COCHIN SHIPYARD,
M.G.ROAD, ERNAKULAM-682 015.

BY ADVS.
SRI.P.JACOB MATHEW
SRI.MATHEWS JACOB SR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.06.2023, THE COURT ON 14.07.2023 DELIVERED THE FOLLOWING:

'C.R.'

MOHAMMED NIAS. C.P.,J

WP(C) No.20785 of 2006

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Dated this the 14th day of July, 2023

JUDGMENT

The petitioner challenges Ext.P3 award of the Insurance Ombudsman, Kochi, dated 15.7.2004, which upheld the decision of the first respondent Insurance Company that rejected the claim preferred by the petitioner for the insured amount following the theft of the vehicle.

2. The petitioner purchased a Maruti Zen L.X. Car, availing finance from M/s.Kotak Mahindra. on 8.3.2001, which the first respondent insured. On 4.5.2001, the vehicle was stolen from the custody of the petitioner. On a complaint by the petitioner, a crime was registered. The police filed a report that the investigation did not reveal any information, and it can be re-opened in future if the police get any information. The petitioner approached the Insurance Company with a claim which was repudiated, stating that the temporary registration of the vehicle expired on 13.3.2001 and the theft occurred on 4.5.2001, after the expiry of the temporary registration. The insurance company contended that the insured had not taken any steps to register the vehicle permanently, and since at the time of the theft the vehicle had no registration, though the

policy was valid at the time of the theft, the claim is not admissible due to the violation of the Motor Vehicles Act, 1988 (for short 'the Act'). The said order of the insurance company was challenged before the Insurance Ombudsman, who affirmed the decision of the Insurance Company and rejected Ext.P2 claim petition by Ext P3 award that is challenged in this writ petition.

3. A statement has been filed on behalf of the insurance company contending that the Car was purchased on 8.3.2001 and was temporarily registered. On 9.03.2001, the said vehicle was insured with the first respondent under a comprehensive policy, but they had only issued a cover note. Though the period of insurance stated therein was for the period from 9.3.2001 to 8.3.2002, the validity of the cover note is only for 15 days as the same is only a temporary document. The vehicle was stolen on 4.5.2001, pursuant to which the petitioner registered a claim with the first respondent. But the first respondent had repudiated the claim by letter dated 14.06.2002 on the ground that the vehicle's temporary registration expired on 13.3.2001 and there was no vehicle registration at the time of theft. It is their contention that as far as the motor vehicle is concerned, a registered vehicle alone can be insured. To get a registration of the vehicle, a policy certificate should be produced before the Registering Authority, and only after registration will the policy commence. Section 2(4), Section 39, and Section 192 of the Act are

pressed into service to substantiate the repudiation.

4. Heard Sri. K.S. Babu and Smt.N.Sudha, the learned counsel for the petitioner and Learned senior counsel Sri.Mathew Jacob, instructed by Sri.Jacob Mathew, for the first respondent.

5. Learned counsel for the petitioner submits that there was valid insurance coverage at the time of the theft; therefore, the first respondent's repudiation is illegal. It is also the argument that there has been no violation of the provisions of the Act as the vehicle was not used on a public road. The delay in getting the permanent registration was due to the delay in issuing Form No.20 by the financier for production before the registering authority. At any rate, the reason given by the insurance company for repudiating the claim based on the alleged violations of the provisions of the Act is clearly wrong. The insurance policy covered the risk of theft also. The entire insurance premium was collected, and the vehicle was stolen during the validity of the insurance policy hence, the insurance company is liable to compensate the petitioner.

6. Learned senior counsel for the insurance company reiterated the contentions taken in the statement filed and submitted that the cover note had only validity of 15 days, and since the temporary registration expired on 15.3.2001, and the theft occurred on 4.5.2001, when there was no registration for the vehicle therefore, the rejection is in order. Learned

senior counsel also cited the judgment in **United India Insurance Co.Ltd. v. Sushil Kumar Godara** [(2021) 14 SCC 519] to submit that the matter is squarely covered in favour of the insurance company and against the insured.

7. As regards the submission of the learned counsel on behalf of the Insurance company that the matter is covered in their favour, it is pertinent to note that in the said case, the Apex court found that the vehicle's temporary registration had expired on 19.7.2011 and that the vehicle was not registered at the time of theft on 28.7.2011. The Apex court specifically found that despite the lapse of the temporary registration, the vehicle was used for the purpose of travelling outside his residence to Jodhpur, and he stayed overnight in a guest house only to discover in the morning on 28.07.2011 that the Car had been stolen. In that context, the Apex court held that the insurer was not liable as the vehicle had been driven/used without a valid registration amounting to a clear violation of Section 39 and Section 192 of the Act. On facts, it was found that not only was the vehicle driven, but it was also taken to another city, where it was stationed overnight in a place other than the respondent's premises. Thus, the material fact, in that case, is that the vehicle was driven to a place from where it was stolen after the expiry of the temporary registration, and but for the theft, the respondent would have driven back, which undoubtedly was a clear violation of the

provisions of the Act. A discussion of the facts would clearly show that Supreme Court, in that case, clearly found on facts that concededly, the vehicle was used in violation of the provisions of the Act.

8. In the instant case, the vehicle was admittedly stolen from the house and not driven/used in violation of the provisions of the Act, in particular, Section 39, which clearly mandates that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with the statute. In such circumstances, the contention of the senior counsel that the matter is covered on all fours with the judgment in **Sushil Kumar Godara** (supra) cannot be accepted. Like wise, in **Narinder Sing v. New India Assurance Company Ltd. and others** [(2014) 9 SCC 324], which is the decision relied on in **Sushil Kumar Godara** (supra). the facts reveal that the vehicle in question, in that case, was insured for the period from 12.12.2005 to 11.12.2006, and its temporary registration expired on 11.01.2006. On 2.2.2006, the said vehicle met with an accident. In that case, also at the time of the accident, on 2.2.2006, the vehicle had been driven without registration, which is prohibited under Section 39 of the Act and an offence under Section 192 of the said Act. The Supreme Court found that using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Act but also a

fundamental breach of terms and conditions of the policy contract, besides being a clear violation of Section 39 of the Act. Chapter XI of the Act, which deals with insurance of motor vehicles against third-party risk, also prohibits the use of a motor vehicle in a public place as per Section 146 of the Act. Thus, the above judgments are rendered on different facts, making it distinguishable from the instant case. I reject the contention of the learned counsel for the Insurance Company that the judgment above squarely covers the issue on hand.

9. It is trite that a precedent is a judicial decision that carries the weight of what it actually decides and not matters on the peripheral. Each case depends on its own facts, and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases by matching one case's color against another's. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive [**K.T.M.T.M. Abdul Kayoom v. CIT,** (AIR 1962 SC 680]. The essence of a decision is its ratio and not every observation found therein nor what logically follows from its various observations. It is not a profitable task to extract a sentence, here and there, from a judgment and to build upon it [**State of Orissa v. Sudhansu Sekhar Misra** [(1968) 2 SCR 154]. Courts should not place reliance on decisions without discussing as to how the factual situation

fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute, and that, too, taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases, and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes [**Union of India v. Bahadur Singh** [(2006) 1 SCC 368]. Circumstantial flexibility, one additional or different fact, may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. [**State of Haryana v. AGM Management Services Ltd.** [(2006) 5 SCC 520]. The ratio of a judgment has a precedential value, and it becomes obligatory on the part of the Court to cogitate on the judgment to the facts exposited therein and the context in which the questions had arisen, and the law has been declared.

10. In the instant case, indisputably, the petitioner paid the entire premium, and the period of insurance stated in the cover note was from 9.3.2011 to 8.3.2002. The contention that the cover note is valid only for 15 days is not mentioned anywhere, including to the insured, in any of the

documents. The repudiation in the instant case is only on account of the alleged violation of the Act, which also is not proved as the vehicle was not driven in a public place and far from it; it was kept inside the residence, possibly because the temporary registration had expired. The receipt of the premium in full and notifying the period of insurance would bring into force a valid contract. It is not the insurance company's case that the contract insurance has been cancelled, and all concerned have been intimated. In the judgment of the Supreme Court in **National Insurance Co. Ltd v. Abhaysingh Pratapsingh Waghela and Ors.** [JT2008 (9)SC 493] It was clearly held that if a cover note is issued, it remains valid till it is cancelled. A cover note issued in terms of clause (b) of sub-section (1) of Section 145 of the Act would come within the purview of a definition of a certificate of insurance, meaning that it would come within the ambit of the definition of an insurance policy.

11. Indisputably, there was no such cancellation in the instant case, nor was the premium taken from the petitioner returned. Once the certificate of insurance is issued, the insurance company cannot be absolved of liability to insure the risk. It is also to be seen that going by the principles laid down by the Division Bench in **National Insurance Company Ltd. vs. Sushakaran** [2019 (1) KLT 133] when once it is admitted that the premium had been received at a particular date and time, from that moment onwards wherever an interpretation is required to consider

the question of assumption of risk especially arising out of a motor vehicle accident the provision which is relevant is one given under Section 64-VB of the Insurance Act. In such circumstances, the said provision cannot be made inapplicable simply by referring to or relying on the commencement of the insurance coverage going by the conditions in the policy document. The Division Bench held that if such a construction is not given, it would invariably make the provisions under Section 64-VB of the Insurance Act annihilative to the purpose and intention of Section 146 of the Act.

12. Even otherwise, there has been no intimation to the petitioner that the validity of the cover note is restricted to fifteen days. In the absence of any such intimation, the repudiation of the claim by the insurance company is plainly illegal. It is relevant to note that the principle of uberrima fide applies to both the insurer and the insured. It is profitable to extract the principle noticed in the judgment of the Supreme Court reported in **Jacob Punnen and Another v. United India Insurance Co. Ltd.** (2021 KHC 6810), which reads thus:

> "24. A striking feature of insurance law, is the principle of uberrima fide (duty of utmost good faith) which applies to both the insured as well as one who seeks indemnity and cover. In United India Insurance Co. Ltd. v. M. K. J. Corpn., (1996) 6 SCC 428 this Court underlined the importance of this principle, and its application to the insurer, in the following terms:
>
> It is a fundamental principle of Insurance law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non-disclosure) what he privately

> knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose, similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the assured. The duty of good faith is of a continuing nature. After the completion of the contract, no material alteration can be made in its terms except by mutual consent. The materiality of a fact is judged by the circumstances existing at the time when the contract is concluded."

13. As stated earlier, there is no proof of any violation of the provisions of the Act, as the vehicle was not driven in a public place without registration. In the absence of any statutory provision/ clause in a contract that stipulates the violation under the provisions of the Motor Vehicles Act as a ground for repudiating the contract, the repudiation in the instant case has to be held to be illegal and unacceptable. A contract is based on reciprocal promises, which is a condition precedent for a valid contract. All the requirements for valid insurance coverage are met in the instant case. In interpreting documents relating to a contract of insurance, the duty of the court is to literally interpret the words in which the parties express the contract because it is not for the courts to make a new contract, however reasonable if the parties have not made it themselves.

14. That apart, the Insurance Company, an instrumentality of the state has to conform to the constitutional mandate to act fairly and reasonably under all circumstances even if their business dealings are in the realm of contract. Rule of reason, rule against arbitrariness, rules of fair play, and

natural justice are all applicable in every situation when the State/instrumentality deals with the citizens. In the instant case, I also hold that the Insurance Company has not acted fairly while repudiating the claim. The insured, while taking up a policy and meeting the stipulations as regards the same has a legitimate expectation of the risk being covered, and I find that in the instant case, there is a breach of contract on the part of the Insurance Company in repudiating the claim to which the petitioner is entitled.

15. None of the reasons mentioned in Ext.P3 award can be sustained on the basis of the findings rendered herein. Accordingly, Ext.P3 award of the Insurance Ombudsman is set aside. The writ petition is allowed, and I direct the first respondent - insurance company to pay an amount of Rs.3,19,730/- within four weeks from today. However, if the insurance company delays the aforesaid payment beyond four weeks, then this amount will carry an interest of 9% from the date of expiry of the period of four weeks till the date of actual payment.

The Writ Petition is allowed as above.

Sd/-MOHAMMED NIAS C.P., JUDGE

dlk/1.7.2023

APPENDIX OF WP(C)NO.20785 OF 2010

PETITIONER'S EXHIBITS

EXHIBIT P1	TRUE PHOTOSTAT COPY OF THE REPORT SUBMITTED BY THE C.I.OF POLICE, PONNANI BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, PONNANI
EXHIBIT P2	TRUE COPY OF THE ORDER REJECTING THE CLAIM PETITION OF THE PETITIONER.
EXHIBIT P3	TRUE PHOTOSTAT COPY OF THE AWARD DATED 15.7.2004 OF THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS

EXHIBIT R1(1)	TRUE COPY OF THE TEMPORARY CERTIFICATE OF REGISTRATION ISSUED TO THE PETITIONER BY REGISTERING AUTHORITY, ERNAKULAM VALID UNTIL 13.03.2001