



INSURANCE

No Policy Without Premium: Kerala High Court Clarifies Insurer's Non-Liability

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Introduction

In a significant judgment in *HDFC ERGO General Insurance Co. Ltd. v. Zeenath & Ors*¹, the Kerala High Court clarified the scope of an insurer's liability in motor accident claims where the insurance policy was alleged to have been cancelled due to non-payment of premium. The Court reaffirmed the settled principle that an insurer cannot be held liable without a valid and concluded insurance contract.

The judgment, delivered by Justice C. Pratheep Kumar, offers important interpretative guidance on Section 64-VB of the Insurance Act, 1938, and Sections 147 and 149 of the Motor Vehicles Act, 1988, particularly concerning insurer obligations towards third-party claimants.

Factual Background

The claim originated from a fatal motor accident on March 23, 2010, involving Mohameed Aneefa, who died when a passenger negligently opened the rear door of a car, causing him to fall from his motorcycle. The legal heirs of the deceased filed a compensation claim before the Motor Accidents Claims Tribunal (MACT), Irinjalakuda, which awarded ₹42,34,589/- and directed HDFC ERGO General Insurance Company to satisfy the award as the insurer of the offending vehicle.

On appeal, the insurer contended that although a cover note (Ext. B1) had been prepared, the insurance proposal was cancelled immediately due to non-receipt of premium, and the policy document was never delivered to the insured. Accordingly, the insurer argued that no valid contract of insurance had come into force, and consequently, it bore no liability.

Legal Issues

The High Court framed two critical questions:

- Whether the offending vehicle was covered by a valid insurance policy at the time of the accident.
- Whether the failure to issue a separate notice of cancellation rendered the insurer liable, despite non-issuance of the policy.

Court's Analysis and Reasoning

1. Cancellation of the Cover Note and Evidence from RW1

The insurer argued that although a cover note (Ext. B1) was prepared, it was cancelled immediately due to non-payment of the premium. All four copies, including those meant for the insured, remained with the insurer, indicating that the policy was never delivered. This was supported by the testimony of RW1, who confirmed that the cover note was neither issued nor activated. The Court accepted this evidence, concluding that no concluded contract of insurance had come into existence.

2. Premium Payment as a Precondition under Section 64-VB

Reiterating the mandate of Section 64-VB of the Insurance Act, 1938, the Court held that premium payment is a necessary condition for an insurance contract to become effective. In its absence, the insurer assumes no risk.

3. Reference to Laxamma and Its Distinction

The Court referred to *United India Insurance Co. Ltd. v. Laxamma & Ors*², where the Supreme Court held that an insurer remains liable to third parties even if a premium cheque is dishonoured, provided the policy was issued and a cancellation notice was not given before the accident. However, the Court distinguished the present case, noting that the policy was never issued or delivered. Since the cover note was cancelled at inception and retained by the insurer, there was no need to issue a separate cancellation notice. The insured was presumed to have constructive knowledge of the cancellation.

4. Tribunal's Error

The Tribunal had speculated that the cover note might have been returned by the vehicle owner after issuance. However, both Respondents 1 and 2 (the claimants and vehicle owner) remained *ex parte* before the Tribunal, and no evidence was led to support such an inference. The Court found this assumption entirely unsupported by the record, emphasizing that no proof of payment or policy delivery existed.

5. Conclusion on Liability

The Court held that no valid insurance policy was in force at the time of the accident and set aside the Tribunal's direction requiring the insurer to pay ₹42,34,589/-. Since the quantum of compensation awarded by the Tribunal was not under challenge, the Court confined its interference to the issue of liability. Liability was rightly fixed on the registered owner (second respondent) of the offending vehicle.

Legal Significance

This judgment reiterates several important legal principles:

- **No Contract Without Consideration:** The insurer's liability arises only upon the conclusion of a valid contract of insurance, which requires consideration, i.e., payment of premium. Mere preparation of a cover note is not equivalent to the issuance of a policy.
- **Constructive Knowledge and Notice:** Where the insured never receives the policy and the insurer retains all documents, the insured is presumed to have constructive notice of the cancellation. In such a scenario, formal notice is not mandatory.
- **Protection of Third Parties:** While Sections 147 and 149 of the Motor Vehicles Act provide for third-party protection, that protection only applies when a valid insurance policy exists. The judgment carefully balances the insurer's obligations with fairness to third-party claimants, especially where there is no concluded contract.

Judicial Alignment Across High Courts

The legal position affirmed in *Zeenath* aligns with a broader judicial consensus on insurer liability. Courts have consistently held that both premium payment and policy issuance are essential to constitute an enforceable contract of insurance.

In *New India Assurance Co. Ltd. v. Trilochan Jane*³, the Orissa High Court held that insurer liability cannot arise where the insured had prior knowledge of cancellation or the policy was never delivered, even if the cancellation followed a dishonoured premium cheque. Similarly, in *National Insurance Co. Ltd. v. Seema Malhotra & Ors.*⁴, the Delhi High Court ruled that a mere proposal or cover note without premium and policy issuance does not trigger liability under Section 149 of the Motor Vehicles Act.

These rulings, like *Zeenath*, reaffirm that procedural formalities alone cannot substitute for a valid, concluded insurance contract in determining statutory liability.

Implications for Stakeholders

- **Insurers:** The judgment offers insurers much-needed clarity and protection in cases where the policy is cancelled ab initio due to non-payment. However, they must ensure that documentary records are robust and cancellations are timely and internally recorded.
- **Vehicle Owners:** The ruling underlines the importance of verifying that the insurance premium has been paid and the policy document received. Reliance solely on verbal assurances or cover notes without proof of payment may leave owners exposed to personal liability.
- **Tribunals and Courts:** The judgment provides a framework for determining insurer liability in cases of disputed policy issuance, emphasizing evidentiary thresholds over presumptive obligations.

Conclusion

The Kerala High Court's ruling in *HDFC ERGO v. Zeenath* clarifies a nuanced area of insurance liability law, emphasizing that no liability can arise in the absence of a concluded and delivered insurance contract. By shifting liability back to the registered vehicle owner and exonerating the insurer, the Court delineated the boundary between policy preparation and policy issuance.

This decision will serve as a reference point in future claims where insurers contest liability on grounds of non-payment and non-issuance, ensuring contractual discipline and reducing the scope for unwarranted claims.

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