

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE S.S.SATHEESACHANDRAN**

WEDNESDAY, THE 30TH JUNE 2010 / 9TH ASHADHA 1932

AS.No. 267 of 1995(D)

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(OS.NO.273/1992 OF PRINCIPAL SUB COURT,N. PARAVUR)
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APPELLANT:

**P.P. ANTONIYO, S/O. PAILY,
POYYATHURUTHIL HOUSE,
VADAKKUMPURAM.P.O., N. PARUR.**

**BY ADVS. SRI.A.C.JOSE,
SRI.C.A.MAJEED,
SRI.SUNIL JOSE.**

RESPONDENT:

**UNITED INDIA INSURANCE CO. LTD.,
REPRESENTED BY ITS BRANCH MANAGER,
MUNCIPAL BUILDINGS, MAIN ROAD,
N. PARUR.**

**BY ADVS. SRI.A.A.MOHAMMED NAZIR,
SRI.WILSON URMESE.**

**THIS APPEAL SUITS HAVING BEEN FINALLY HEARD
ON 30/06/2010, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

prv.

**THOTTATHIL B.RADHAKRISHNAN
& S.S.SATHEESACHANDRAN, JJ.**

A.S.No.267 of 1995

Dated this the 30th day of June, 2010

JUDGMENT

THOTTATHIL B.RADHAKRISHNAN, J.

The plaintiff, in a suit for recovery of money allegedly due under an insurance policy, is the appellant.

2. Alleging that a bus belonging to the plaintiff was insured by the first defendant and on the allegation that the first defendant has failed to honour the insurance policy on the occurrence and reporting of the theft of that bus, the plaintiff sued, seeking relief on the basis of the insurance policy.

3. The defendant contested, contending that the vehicle was got insured by the plaintiff by suppressing material facts including that the vehicle was under the hypothecation covered by a financier and that there were disputes between the plaintiff, his brother and another

person regarding the title to the bus. The alleged theft was also refuted by the defendant. The court below held that in spite of the written statement of the defendant, the plaintiff did not take steps to implead his brother or the other person, who had certain claims over the vehicle and that the financier was also not in the array of parties. Accordingly, it was held, the suit was bad for non-joinder of parties. The court below further held that the plaint claim is not sustainable on facts and in evidence.

4. Having considered the pleadings and evidence and having heard the learned counsel appearing before us, we find that the case in hand has been decided by the court without adverting appropriately to the plea of the defendant insurer that the plaint claim ought not to be enforced having regard to the fact that the policy itself was obtained suppressing the material facts that the bus was covered under a hire purchase agreement, as also about the

pendency of the rival claim over the title to the bus. The policy of insurance rests on the principle uberrima fides, requiring the person seeking an insurance cover has to disclose all relevant and material particulars to the insurer. Utmost faith is the essence of an insurance transaction. This would stand thwarted when it is shown by the insurer that the policy was obtained without disclosing relevant and material facts available within the knowledge of the insured and which would have enabled the insurer to decide as to whether the insurer coverage is to be given or not. The materials on record clearly show that the plaintiff does not dispute the fact that the insurer was not informed of the pendency of the disputes between him, his brother and another, regarding the title to the bus and also the fact that the vehicle was covered by a hypothecation in favour of another person. It is a matter of record that the financier had addressed a communication thereafter to the insurer.

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We also take note of the fact that even according to the plaintiff, the vehicle would have been taken away by the previous owner, who, according to the plaintiff, had an axe to grind against him. With the quality of materials on record, the impugned decree and judgment cannot, but be sustained.

In the result, the appeal fails and the same is accordingly dismissed with costs.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN)
JUDGE

Sd/-
(S.S.SATHEESACHANDRAN)
JUDGE

sk/

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P.S. to Judge.