

To attract section 170 of MV Act, two conditions are to be satisfied

the Kerala High Court consisting of Justice P A Mohammed and Justice G Sivarajan, though the two clauses laying down the conditions are connected with the word 'or'.

When the word 'or' is used in relation to two or more alternatives, it is not necessarily a case where the alternatives are mutually exclusive. The question as to whether they are mutually exclusive or not must be determined by applying the general rule that words should be construed to ascertain the intention of the provision in question to be collected from the whole of its terms.

In view of this legal premise, the two conditions mentioned in section 170 cannot be said to be mutually exclusive. When there is collusion between the person making the claim and the person against whom the claim is made, the second condition that the person against whom the claim is made has failed to contest the claim, is inclusive of the former. Both the conditions connote a cognate idea and also envisage an intention of generality, meaning thereby that the collusion between the parties can also be by failing themselves to contest the claim.

The two conditions cannot be interpreted as mutually exclusive because the former condition does not exclude the latter. The later condition includes

within the operative premises of the former. Therefore, in order to attract the provisions contained in section 170 the two conditions must be satisfied.

In this case the National Insurance Company had sought to implead in the case alleging that the owner and driver of the vehicle concerned, though entered appearance, had failed to contest the claim. However, there was no allegation that there was collusion between the parties and, therefore, the insurer could not be allowed to contest the claim invoking the provisions of section 170 of the Act.

Section 3(5) of the Kerala Chitties Act, 1975, classifies the foremen of chitties into three - Government companies, banking companies and private individuals. No foreman shall be entitled to conduct at a time chitties, the aggregate amount of which exceeds 60 percent of the net assets of the foreman, subject to a maximum limit of rupees two lakh, in case the foreman is a banking company, and 50 percent of the net assets subject to a maximum limit of Rs 25,000 if the foreman is an individual or other bodies. At the same time the section permits a company owned by the Government of Kerala to conduct chitties without any such limit.

Does this amount to discrimination prohibited under Article 14 of the Constitution of India?

No, says Justice K A Abdul Gafoor of the Kerala High Court (OP 2132/96).

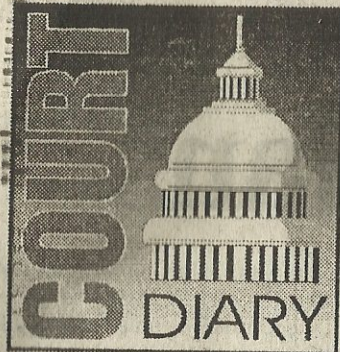
Chitties Act is a legislation intended to safeguard the interest of the public who invest in chit funds. If individuals are allowed to conduct chitties worth any amount, that will necessarily imperil the interest of the general public. In case of default by a foreman, the general public should get back the amount invested by them.

In respect of banking companies, there is a certain amount of safeguard, as they are subject to several regulations, including

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those issued by the Government of India and the Reserve Bank. That is why the Legislature put an upper limit of rupees two lakh in the case of chitties conducted by banking companies.

Thus the classification cannot be said to be ultravires, violating Article 14 of the Constitution. The dealings of the Government company always stand on a different footing as it is owned by the Government of Kerala, which itself is a safeguard to the investing public. Hence, the proviso enabling the Government company to conduct chitties without any limit is not discriminatory.



An insurance company which is liable to honour the claims against the driver and owner of a motor vehicle which has met with an accident, is to be impleaded as a party to the claim case, if the Motor Accidents Claims Tribunal trying the case is satisfied that there is collusion between the person making the claim and the person against whom the claim is made, or, the person against whom the claim is made has failed to contest the claim. Once so impleaded, the insurance company has the right to contest the claim on all or any of the grounds available to the person against whom the claim has been made.

Such is the provision of section 170 of the Motor Vehicles Act, 1988.

Thus, in order to attract section 170, two conditions are to be satisfied: one, there must be collusion between the claimants and the owner/driver of the vehicle; two, the owner/driver must have failed to contest the claim. If the first condition is not satisfied, will section 170 get attracted?

No, says a Division Bench of