
(1988) 05 KL CK 0002
In the High Court Of Kerala
Case No : M.F.A. No. 360 of 1982

Mallika

APPELLANT

Vs

Samuel George and Others

RESPONDENT

Date of Decision : 23-05-1988

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 95(2)

Citation : (1988) ACJ 750

Hon'ble Judges : V. Sivaraman Nair, J;P.K. Shamsuddin, J

Bench : Division Bench

Advocate : Siby Mathew and A.A. Mohammed Nazir, for the Appellant; T.L. Ananthasivan and Mathews Jacob, for the Respondent

Final Decision : Dismissed

Judgement

V.V. Sivaraman Nair, J.—The owner of a stage carriage, which was registered as KLH 5952 and was insured with the third Respondent - the New India Assurance Company Ltd. is the Appellant. She was the 1st Respondent in O.P. No. 278 of 1980 before the Motor Accidents Claims Tribunal, Ernakulam. That was an application filed u/s 110-A of the Motor Vehicles Act and was filed by the father of a girl, Vimala, aged 18 years who was studying in the Pre-Degree Class and who died as a result of an accident involving the above vehicle on 22.2.1978. She was thrown out of the bus. The accident occurred at about 9.00 a.m. and the girl succumbed to her injuries at 7.45 p.m. The applicant claimed an amount of Rs. 25,000/- as compensation. It is the applicant's case that the accident occurred due to the rashness and negligence of the driver of the stage carriage. The applicant examined one witness and marked Exhs. A 1 to A 10. No witnesses were examined on the side of the Respondents.

2. On the basis of the oral and documentary evidence, the Tribunal found that the accident occurred due to the negligence of the driver of the Appellant. It found further that the vehicle was covered by an insurance policy. The Appellant had not produced the same. Nor did the insurance company produce copy

thereof. The Tribunal found that the applicant was entitled to an amount of Rs. 15,000/- as compensation for the death of his daughter. It found further that since the policy was not produced, it had to be presumed that it was an "Act policy". The Tribunal, therefore, held that the liability of the insurer would be limited to Rs. 5,000/- The insured-owner was required to pay the balance amount of Rs. 10,000/- . It is against that award that the Appellant has filed this appeal.

3. Counsel for the Appellant did not challenge the findings relating to the rashness and negligence of the driver. Nor did he assail seriously the quantum of compensation awarded by the Tribunal. His main submission was that the Tribunal ought to have assumed that the policy was comprehensive, since the insurer had not produced a copy of the insurance policy. Counsel submitted further that according to the law as it was understood at the time when the Tribunal disposed of the application, the insurer ought to have produced at least a copy of the policy, and in the absence of the policy, the Tribunal ought to have inferred that the insurer was liable to cover risks other than or greater than that covered by Section 95(2)(b) of the Motor Vehicles Act. Counsel submitted further that he may at least be given an opportunity now to produce the original policy which, he believes, may be a comprehensive policy.

4. It is now six years after the appeal was filed. The Appellant did not think it necessary till date to produce the policy, which must obviously have been with her. She has not even bothered to ascertain whether that was an "Act policy" or a comprehensive policy. She is not certain as to what she is likely to produce if an opportunity is now given to her. Unless she is certain about one or the other, she will not be justified in seeking such an opportunity. We do not find any justification in protracting the disposal of this appeal any further, on the basis of uncertain averments or indefinite assumptions.

5. An important circumstance which cannot be omitted is that the Appellant was in possession of the original policy. The acceptance of her submission that the insurer should have been required to produce copy of that policy and in the absence of such production it should be inferred that the insurer had unlimited liability will mean that he who is in possession of the original policy can hold it back from the court or Tribunal and can still find fault with another person who did not produce a copy which was with him. Acceptance of the submission will also mean that he who refuses to produce the original of a document can successfully ask for an order or award against the latter. We are unable to accept this very specious contention urged on behalf of the Appellant.

6. We are satisfied that the Tribunal has acted very conventionally and perhaps with excessive moderation in fixing the amount of compensation. We do not find any ground to interfere with that determination as we have already indicated that the Appellant has no serious contention in this appeal that the amount of compensation was so excessive or arbitrary as to call for interference by this Court. The appeal therefore fails and the same is hereby dismissed.