(2024) 11 KL CK 0019

In the High Court Of Kerala

Case No : M.A.C.A No. 2589 of 2016

Mepparambath Govindan APPELLANT

Vs

Mosadik P.T.P RESPONDENT

Date of Decision : 04-11-2024

Acts Referred:

Citation : (2024) 11 KL CK 0019

Hon'ble Judges : Johnson John, J

Bench : Single Bench

Advocate : Abdul Raoof Pallipath, Gracy Poulose, E.Mohammed Shafi, Prajit Ratnakaran, Lal K Joseph, Abraham K.John, C.G.Arundhathi, P.K.Balakrishnan, M.Sanjeevan, Suresh Sukumar, Anzil Salim

Final Decision : Allowed

Judgement

Johnson John, J

1. The appellant was injured in a motor vehicle accident on 24.03.2004. At the time of the accident, the appellant was traveling as a pillion rider on the motorcycle bearing registration No. KL- 13E/1451. The Tribunal awarded compensation of Rs.84,150/- as against respondents 1 and 2, and exonerated the 3rd respondent insurance company from liability on the ground that the appellant was a gratuitous pillion rider not covered by the act only policy issued by the 3rd respondent insurance company.

2. The learned counsel for the appellant argued that the Tribunal recorded a finding that the policy issued by the 3rd respondent insurance company is an act only policy and that no additional premium was paid to cover the risk of a gratuitous passenger, without any evidence in this regard.

3. Heard both sides and perused the records.

4. The impugned award of the Tribunal shows that from the side of the petitioner, Exhibit A1 to A7 were marked and no other oral or documentary evidence

adduced in the case. There is nothing on record to show that the 3rd respondent insurance company has produced the copy of the policy of insurance before the Tribunal. It is pertinent to note that the 3rd respondent has admitted in the written statement that the motor cycle bearing registration No. KL-13E/1451 was insured with the 3rd respondent at the time of the accident. The 3rd respondent also raised a contention in the written statement that the policy does not cover a gratuitous pillion rider.

5. As noticed earlier, there is nothing in the impugned award to show that the 3rd respondent insurance company produced a copy of the policy of insurance. In the absence of production of a copy of the insurance from the side of the 3rd respondent insurance company, it is not forthcoming as to how the Tribunal recorded a finding that the policy is only an act only policy and no additional premium was paid to cover the risk of a gratuitous passenger. The said finding of the Tribunal in the impugned award is not supported by evidence and therefore, the said finding of the Tribunal exonerating the 3rd respondent insurance company from liability is not legally sustainable.

6. The learned counsel for the 3rd respondent insurance company argued that an opportunity is to be given to the 3rd respondent insurance company to produce the copy of the policy of insurance and to adduce additional evidence in this regard.

7. In the aforesaid circumstances, the finding in the impugned award that the policy of insurance issued by the 3rd respondent insurance company is only an act only policy and that the 3rd respondent is not liable to pay compensation to the appellant/petitioner, is liable to be set aside and the matter is required to be remanded to the Tribunal to enable the parties to adduce additional evidence regarding the liability of the 3rd respondent insurance company.

In the result, this appeal is allowed and the finding in the impugned award exonerating the 3rd respondent insurance company from liability is set aside and the matter is remanded to the Tribunal with a direction to the parties to appear before the Tribunal on 02.12.2024. Since the claim petition is of the year 2006, the Tribunal shall take earnest efforts to dispose of the matter as expeditiously as possible.