
(2012) 07 KL CK 0250
In the High Court Of Kerala
Case No : MFA. No. 208 of 2011

M/s. New India Assurance Co. Ltd.

APPELLANT

Vs

Prakasan Nair and Others

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0250

Hon'ble Judges : Thottathil B. Radhakrishnan, J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : Lal George, for the Appellant; T.C. Suresh Menon Advocate, Sri. P.S. Appu Advocate and Sri. A.R. Nimod Advocate, for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—This appeal is filed by the third respondent in an application filed before the Workmen's Compensation Commissioner. We refer to the parties going by their status in the proceedings before the Commissioner. The appellant had provided insurance cover for a motor vehicle belonging to the first respondent Abhilash. The applicant suffered injuries in an accident. He pleaded in his application before the Commissioner that he was employed with the second opposite party, Rajesh, in the work of brick business and on the date of accident he was employed by the second opposite party and the accident occurred out of and in the course of such employment.

2. The appellant/insurer pleaded that it had not provided any insurance cover for the second opposite party Rajesh and that the insurance cover was only for the first opposite party Abhilash. Though in his proof affidavit, the claimant gave the version that the business was jointly conducted by opposite parties 1 and 2, he had no such case in his application. We see the version in the proof affidavit of the applicant as merely an after-thought, in the backdrop of the situation that the insurer has pleaded that the insurance cover was only for the first opposite party. The appreciation of evidence in this regard is, in our view, egregiously erroneous in law in as much as the Commissioner could not have acted on any

material contradiction or contradicting plea of the claimant in the application and, in the evidence. Since the claim petition proceeded on the sole basis that the claimant was employed with the second opposite party Rajesh, there was no room to mulct the appellant, who is the insurer of the first opposite party before the Commissioner, with any liability to indemnify. Hence, this appeal succeeds.

In the result, this appeal is allowed vacating the impugned award in so far as it is against the 3rd opposite party, the appellant. The award in so far as it is against the second opposite party is confirmed and the applicant will be entitled to realize the amount from the second opposite party to the extent of his estate, since he is stated to be dead.

The appeal is accordingly allowed. No costs.