

(1997) 02 KL CK 0013
In the High Court Of Kerala

New India Assurance Co. Ltd.

APPELLANT

Vs

Jacob Roy and Others

RESPONDENT

Date of Decision : 12-02-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 2(i)

Citation : (1997) 02 KL CK 0013

Hon'ble Judges : K.K. Usha, J;G. Sivarajan, J

Bench : Division Bench

Judgement

K.K. Usha, J.—This is an appeal at the instance of New India Assurance Company Limited, the third respondent in M.V.O.P. 571 of 1984 before the Motor Accident Claims Tribunal, Kottayam. The first respondent is the claimant and respondents 2 and 3 are the driver and owner of the offending vehicle. The Tribunal found that the first respondent was entitled to an amount of Rs. 84,610/- as compensation for the injuries sustained by him in the accident. The Tribunal further found that the Insurance Company is liable to pay the entire amount.

2. It is contended by the appellant that the Tribunal has committed an error in not accepting its contention that its liability in respect of third party's claim was limited to Rs. 50,000/- under the insurance policy issued by its covering the vehicle. The insurance policy is produced as Ext. B-1. On going through the policy, we find that the appellant is justified in its contention. The insurance liability u/s II(i) is limited to the liability under the Motor Vehicles Act, 1939 which was Rs. 50,000/- during the relevant period. The unlimited liability was only in respect of the claim coming u/s II-1(ii) which relates to the damages to property caused by the use of any motor vehicle. A reference to the premium paid as is discernible from the insurance policy, Ext. B-I also will show that the liability of the Insurance Company is limited to Rs. 50,000/-. No additional premium is seen paid.

3. We do not find any merit in the contention raised by the appellant against the quantum of compensation fixed by the Tribunal.

4. A cross-objection has been filed by the claimant which, we find, is not maintainable in view of the decision of this Court in *New India Assurance Company v. Kunhiraman Nambiar* 1994(1) KLT 956. But the learned Counsel for the claimant submitted that even if the cross-objection is not maintainable, by exercising the discretionary power of this Court under Order 41 Rule 33, this Court can grant enhancement of the rate of interest from 9% to 12%. In support of the above contention, he relied on the decision of this Court in *Oriental Insurance Co. Ltd. v. Mary Pushpam* 1996(1) KLT 806 and that of the Supreme Court in *Mahant Dhangir and Another Vs. Madan Mohan and Others*, . It is true that going by the victim laid down by the above decisions even when a cross-objection is not maintainable when the appeal is by a co-respondent, it is open to the appellate Court to grant relief by exercising the power under Order 41 Rule 33. But, in this case, even in the memorandum of cross-objection the claimant has not taken any ground for enhancement of the rate of interest. The learned Counsel appearing on behalf of the appellant as well as the owner and driver submit that in such circumstances this Court should not exercise its discretionary power in favour of the claimant. In support of their contention, they relied on the decision of the Supreme Court in *Tummalla Atchaiah Vs. Venka Narasingarao*, . In view of the above facts, we are not inclined to exercise our jurisdiction under Order 41 Rule 33 to grant higher rate of interest to the claimant.

5. In view of the above, we set aside the finding of the Tribunal that the liability of the Insurance Company is not limited to Rs. 50,000/- towards the third party's claim. The owner and driver will be liable to pay the balance amount of the award with interest as granted by the Tribunal.

6. Pursuant to an interim order passed by this Court on 11.11.1988, the appellant had deposited an amount of Rs. 50,000/-. The balance amount due from the appellant to the claimant would be deposited within one month before the Tribunal.

The appeal stands partly allowed and the cross-objection stands dismissed. There will be no order as to costs,