

(1985) 07 KL CK 0011
In the High Court Of Kerala
Case No : M.F.A. No. 112 of 1982

New India Assurance Co. Ltd.

APPELLANT

Vs

Kumari Della and Others

RESPONDENT

Date of Decision : 30-07-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145
Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1939 — Section 110E

Citation : (1986) ACJ 414

Hon'ble Judges : K.S. Paripoornan, J; K.K. Narendran, J

Bench : Division Bench

Advocate : T.K.M. Unnithan and V. Jayakumar, for the Appellant; P. Ramanujam, for the Respondent

Final Decision : Dismissed

Judgement

1. The 3rd Respondent in O.P. No. 328 of 1979 before the Motor Accidents Claims Tribunal, Ernakulam--The New India Assurance Company Ltd.--is the Appellant in this appeal. The Petitioner/claimant in the O.P., is the first Respondent in the appeal. The 1st Respondent before the Tribunal is the owner of the vehicle and Respondent No. 2 is the driver of the vehicle. The Petitioner before the Tribunal, a student aged 12 (then) suffered injuries as the result of a motor accident which took place on 27.1.1976 in front of the Hill Palace Police Station, Tripunithura. It was found by the Tribunal that the accident was the result of rash and negligent driving by the 2nd Respondent, of the bus belonging to the 1st Respondent. The claimant suffered very seriously. She stopped her education. She had to undergo treatment continuously. She cannot bend her injured leg. She was operated twice. Taking into account all these factors, the Tribunal awarded a sum of Rs. 35,000/- with 6% interest from 12.9.1977 payable by Respondents 1 to 3. The insurance company-3rd Respondent before the Tribunal-(Appellant in this appeal) was directed to deposit the amount before the Tribunal. Before the Tribunal the Appellant contended that the existence of a valid insurance policy must be

proved. It was also contended that the Petitioner should prove rashness and negligence of the driver. The company also stated that there was collusion between the Petitioner and Respondent Nos. 1 and 2 and prayed for the dismissal of the petition. The award is dated 30.7.1981.

2. Aggrieved by the award, the third Respondent, insurance company, filed M.F.A. No. 112 of 1982 before this Court. One of the contentions taken in the appeal is that the company was not afforded any opportunity to contest the case or to adduce evidence. It is also specifically urged in the appeal memorandum that it has not been proved in this case that there is a valid insurance policy. The owner of the vehicle has failed to do so. In the absence of a valid insurance policy, the insurer has no liability. The appeal was filed on 18.3.1982. The Appellant company filed C.M.P. No. 13960 of 1983 praying that Respondent Nos. 1 and 2 in the appeal may be directed to produce the relevant policy and other relevant insurance documents covering the vehicle KLO 3511 during the period covering the date 27.1.1976. While so, the 1st Respondent in the appeal (claimant before the Tribunal) filed C.M.P. No. 32197 of 1983 for vacating the stay and for awarding compensatory costs. In the affidavit filed in support of C.M.P. No. 32197 of 1983, the father of the 1st Respondent (minor) after referring to the contentions of the Appellant insurance company, stated that there was a valid insurance policy effective from 29.5.1975 to 28.5.1976, that the company in spite of modern facilities available to it, did not even care to verify as to whether there was in existence of a valid policy, that the 1st Respondent has obtained a photostat copy of the policy, produced along with the affidavit and in the circumstances the stay petition may be dismissed and the claimant may be awarded compensatory costs. It is long thereafter, the Appellant insurance company filed a Memo in court dated 23.3.1985 stating that what is stated by the claimant in C.M.P. No. 32197 of 1983 has been found to be true and the amount due under the award has been deposited by it. It is stated that the claimant received the whole of the amount and the Appellant has discharged the liability under the award.

3. When the above Memo dated 23.3.1985 came up before us for passing orders, counsel for the 1st Respondent-claimant pressed for the award of compensatory costs. Counsel contended that the Appellant company went to the extreme stop of disputing the existence of a valid policy and notwithstanding the fact that accident occurred as early as 27.1.1976 and O.P. 328 of 1979 was pending for a long time before the Tribunal, the company did not care to verify as to whether a valid insurance policy existed as averred by the claimant and drove the claimant, an innocent party, who has no means or convenience to ascertain details, to extreme limits and the circumstances warrant the payment of compensatory costs by the insurance company.

4. We requested the Appellant's counsel Mr. Unnithan to explain the circumstances under which the insurer denied the existence of a valid policy, as to whether the company took steps to ascertain whether a valid policy existed as

claimed by the claimant and as to whether the Appellant conducted any enquiry in the matter etc. In pursuance thereto, the Divisional Manager of the Appellant company, has filed a detailed affidavit dated 3.4.1985. Therein details are stated contending that the Appellant could not trace out the policy, since it was one issued by the New Delhi office. It is stated that the Appellant was making enquiries to ascertain the details. But it could not trace out any policy particulars in spite of the earnest attempt made for that purpose. To a repeated question by the court, as to whether there is any correspondence to show regarding the nature of the enquiry made, the Divisional Manager, who was present in court, as also counsel, stated that the company was making enquiries only through telephone.

5. In the light of the detailed affidavit dated 3.4.1985 and the explanations offered by the Divisional Manager, who was present in court, (Sic.) as at present advised, we do not propose to award compensatory costs pressed by the counsel for the 1st Respondent (claimant) Mr. P. Ramanujam. But, however, we entertain great doubts as to whether the Appellant, insurance company, did make any enquiry at all to ascertain as to whether there was a valid insurance policy during the relevant time. No correspondence or other document was placed for our perusal in this connection. The accident occurred a decade ago. The matter was pending before the Tribunal for nearly two years. The matter is pending in this Court for the last three years. In spite of long lapse of time, it is only after the claimant filed a photostat copy of the insurance policy, the company came forward to deposit the amount and took steps to withdraw the appeal. This is not at all a happy or desirable state of affairs. The insurance company like the Appellant company should take a lively and proper interest in the matter and play a vital role which alone will effectuate the purpose and policy behind the establishment of such Tribunals and inspire confidence in such Tribunals by the public. Suffice to say, that we disapprove the negative attitude of a public corporation like the Appellant company. The Appellant should have taken all steps to co-operate with the Tribunal for rendering a proper and effective adjudication in the matter, instead of taking a very negative attitude as done in the instant case. The Motor Accidents Claims Tribunal itself has been established to facilitate a speedy and effective settlement of all claims. If the public sector company like the Appellant were to take a passive or negative attitude, as done in the instant case, the result will be, only to delay and in many cases to deny justice, to a large number of innocent persons who have to resort to the Tribunal to obtain relief. We are constrained to make this observation, since on facts, we felt that the attitude taken by the third Respondent before the Tribunal-the Appellant before us was rather unhelpful, perhaps unmindful of its obligation as a public sector undertaking. We leave the matter there.

6. We direct the Registrar of this Court to send a copy of this order to the Head Office of the Appellant company for appropriate future action to see that there shall be no recurrence of such lapses in the future.

The appeal is dismissed as withdrawn. There shall be no order as to costs.