
(1988) 08 KL CK 0003
In the High Court Of Kerala
Case No : M.F.A. No. 530 of 1988

New India Assurance Co. Ltd. Quilon	Vs	APPELLANT
Thankamma Philipose and Others		RESPONDENT

Date of Decision : 18-08-1988

Acts Referred:

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

Citation : (1989) 2 KLJ 301

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

Bench : Division Bench

Advocate : P.V. Madhavan Nambiar, for the Appellant;

Final Decision : Dismissed

Judgement

Balakrishnan, J.—Third appellant in OP. (MV) 143 of 1986 on the file of the Motor Accidents Claims Tribunal, Alleppey, is the appellant. The appellant is the insurer of a stage Carriage bearing Registration No. K.L.A. 9595. The claimants in the original petition are the legal heirs of one Philipose. On 5-11-1985 at about 6.30 p.m. deceased Philipose was walking along Kodukulanji-Chengannur public road. While so, a bus "Rajimary" driven by the first respondent before the Tribunal came from behind and hit deceased Philipose. Deceased fell on the road and sustained fatal injuries. The first respondent sped away the vehicle without caring for the injured. The claimants moved the Tribunal for a total compensation of Rs. 2,17,800/-. The first respondent driver and the 2nd respondent owner of the bus completely denied the incident. According to them bus K.L.A. 9595 did not involve in any accident on 5-11-1985. They also produced the trip-sheet and other documents to show that the bus was plying in the route regularly on that day and according to them this was a case of mistaken identity. On the claimants side PWs 1 to 5 were examined and PW 1 to 3 were examined on the side of the respondent.

2. Relying on the evidence of PWs 2 to 4 and also on the basis of the F.I.R. inquest report, post mortem report and the scene mahazar, the Tribunal held that

is was bus K.L.A. 9595 which hit against the appellant and knocked him down. The Tribunal found that the first respondent was negligent in driving the vehicle.

3. Deceased Philipose was a sexton attached to St. Mary's Orthodox Church, Kodukulanji. PW 5, a trustee of the church deposed that the deceased was getting a monthly income of Rs. 650/-. The claimants alleged that the deceased was also a tailor and he had income in that respect. The Tribunal held that the annual income of the deceased was Rs. 8,820/-. Deducting Rs. 2820/- towards personal expenses Rs. 6000/- was taken as the annual contribution. Deceased was aged 45 years at the time of his death and 17 was taken as the multiplier, and a sum of Rs. 3,20,000/- was awarded as compensation towards general damages. Apart from this Rs. 500/- was awarded towards transportation charges and Rs. 300/- was granted towards damages to clothing. A sum of Rs. 2000/- was granted towards funeral expenses and another 2000/- Was granted as compensation for pain and suffering. Rs 5000/- was granted towards loss of consortium and damages for bereavement. Thus, a sum of Rs. 1,11,800/- was fixed as the total compensation. The appellant insurance company contended before the Tribunal that the deceased being a third party, the liability of the insurance Company was limited to Rs. 50,000/-. The Insurance company relied on Ext. B1 certificate of insurance. The Tribunal after perusing Ext. B1 certificate of insurance held that the policy issued by the insurance company was a comprehensive one and therefore the liability is unlimited. The insurance company had also relied on Exts. B3 and B4 documents. The learned counsel for the appellant showed us a copy of the certificate of insurance and the policy alleged to have been issued by the appellant in favour of the owner of the vehicle. In the certificate of insurance it is not stated that the liability of the insurance company was limited. It is for the insurance company to prove that they had issued the policy only to cover the limited liability as envisaged u/s 95 of the Motor Vehicles Act. The amount mentioned in section 95 (2) (b) of the Act is the minimum amount of insurer's liability. The insurance company can very well issue policies to cover more liability. The liability of the insurance company depends on the terms of the policy issued by them. In the insurance policy so many abbreviated terms are used, which could only be known to the persons connected with the issuance of the policy. It is for the insurance company to produce the policy and supplement oral evidence to explain the terms of the policy demonstrating "limitation" of liability. If Exts. B1, B3 and B4 are only intended to cover a limited liability of Rs. 50,000/-, the appellant should have adduced precise evidence to this effect. In its absence and in the light of available evidence, the Tribunal was justified in imposing the entire liability on the insurance company when the policy was admitted by the insurance company. We find no reason to interfere with the finding of the Tribunal.

The appeal fails and the same is dismissed in limine.