(2012) 03 KL CK 0204

In the High Court Of Kerala

Case No : MACA. No. 1865 of 2011 (C)

New India Assurance Company Ltd. — APPELLANT

Vs

Simnish E. B., K.T. Rajeev and ICICI Lombarad General Insurance Company Ltd. — RESPONDENT

Date of Decision : 08-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0204

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : KKM. Sherif, Sri. A.A. Ziyad Rahman and Sri. Lal K. Joseph, for the Appellant;

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J

1. The Insurance Company is in appeal. The claim petition was filed by the 1st respondent herein claiming compensation for the injuries sustained by him in a road traffic accident occurred on 25/12/05. Allegedly while the 1st respondent was travelling on the pillion of a motorcycle it collided with a car which was coming from the opposite direction. The 2nd respondent was the owner-cum-driver of the car and the same was insured with the appellant Insurance Company. The learned Tribunal fixed the primary liability on the second respondent who was the owner-cum-driver of the car and the appellant Insurance Company was directed to pay Rs. 84,000/- which was awarded as compensation.

2. In the memorandum of appeal, it is stated that the main contention raised by the appellant Insurance Company before the Tribunal was that the driver of the offending vehicle was not having a valid driving licence on the date of the accident. However without properly considering the contentions, the learned Tribunal made the appellant Insurance Company liable to pay the compensation.

The said finding is under challenge in this appeal.

3. We have heard the learned counsel for the appellant. Though notice was served on the respondents they did not turn up.

4. During the course of the argument the learned counsel for the appellant took us to Ext. A1, copy of FIR which was made available to us for perusal. Ext. A1 would reveal that the validity period of the driving licence held by the 2nd respondent was from 29/07/99 to 28/07/02. As the accident was on 25/12/05 the driving licence held by the 2nd respondent did not cover the date of the accident.

5. The appellant Insurance Company admitted the policy of the offending vehicle. As the 2nd respondent who was the owner-cum-driver of the offending vehicle was not holding a valid driving licence at the time of the accident, there was a violation of one of the policy conditions. However, the learned Tribunal did not order recovery of the award amount by the appellant Insurance Company from the 2nd respondent/owner-cum-driver after making the payment. We see merit in the appeal, as the learned Tribunal has not ordered recovery of the amount awarded from the 2nd respondent. The appeal is allowed. We uphold the direction of the learned Tribunal to the appellant Insurance Company to pay the award amount. We further hold that the appellant Insurance Company can recover the amount awarded from the 2nd respondent who is the registered owner of the offending vehicle after effecting payment to the 1st respondent/ claimant. The award shall stand modified as above.