
(1987) 03 KL CK 0039
In the High Court Of Kerala
Case No : M.F.A. No. 10 of 1982

Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Sarojini Devi and Others

RESPONDENT

Date of Decision : 19-03-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (1988) 2 ACC 615 : (1989) 66 CompCas 281

Hon'ble Judges : V. Sivaraman Nair, J;M.M. Pareed Pillay, J

Bench : Division Bench

Advocate : S. Parameswaran and R. Nithyanandan, for the Appellant; C.K.S. Panicker and P.G.P. Panicker, for the Respondent

Final Decision : Dismissed

Judgement

Sivaraman Nair, J.—The appellant is the insurer of a goods vehicle KLA-2793 which fatally knocked down the husband of the first respondent on July 20, 1975 at about 10.45 p.m. The widow and children of the deceased filed O.P. (M. V.) No. 347 of 1979, before the Motor Accidents Claims Tribunal, Trivandrum, claiming that they were entitled to an amount of Rs. 67,200 as compensation, but limiting their claim to Rs. 50,000. At the time of his death, the deceased was 51 years old and was drawing a sum of Rs. 857 as salary as Principal of the Devaswom Board College, Nariampara.

2. The owner and driver of the vehicle contested the claim stating that the accident was not caused due to rashness and negligence of the driver. The widow of the deceased was examined in support of the claim. The respondents did not lead any evidence. They did not contest the effect of the accident or its fatal consequences. They did not dispute the status of the deceased or his income. The Tribunal, therefore, awarded an amount of Rs. 42,400 along with interest at the rate of 6% from October 29, 1980 to the claimants. The insurer, who is the present appellant, was directed to deposit the amount. It is against that judgment that the present appeal has been filed u/s 110D of the Motor Vehicles

Act.

3. The main contention urged by counsel for the appellant was that the quantum of compensation fixed by the Tribunal was excessive. He also submitted that there was no acceptable evidence on the basis of which the Tribunal could have found that the accident occurred due to the negligence and rashness of the driver of the vehicle.

4. It has been held by this court in the decision *New India Assurance Company Ltd. v. O. V. Radhakrishnan* [1983] K.LT 547, that the contest of the insurer was confined only to the defences contained in Section 96(2) of the Motor Vehicles Act. It was, therefore, not open to the insurer to dispute the quantum of the compensation. The appeal, therefore, has necessarily to fail.

5. The alternative contentions of the appellant that there was no evidence to sustain the finding that it was due to the negligence of the driver only that the accident occurred, and as a consequence of which the deceased met with his death, also cannot be sustained. Admittedly, there was no cross-examination of PW-1. The respondents had not examined any witness at all. If there was collusion between the claimant and the insured, it was open to the insurer to seek the permission of the Tribunal to adopt the defences which were available to the insured. No such case was advanced before us. Nor does the proceeding before the Tribunal indicate that an inference of this nature could have been drawn.

6. In these circumstances, the only course open for us is to dismiss this appeal in affirmance of the judgment and award of the Tribunal. If the appellant had deposited the amount before the Tribunal pursuant to the directions of this court in C.M.P. No. 993 of 1982, along with interest, which had fallen due till that date, the claimants are free to withdraw the same.

7. The appeal is, therefore, dismissed with costs.

8. Issue a photostat copy of this judgment to counsel for the appellant on usual terms.