
(1989) 08 KL CK 0049
In the High Court Of Kerala
Case No : M.F.A. No. 303 of 1984

Oriental Fire and Genl. Ins. Co. Ltd.

APPELLANT

Vs

K.V. Mathew and Others

RESPONDENT

Date of Decision : 31-08-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1990) 1 ACC 421 : (1990) ACJ 717

Hon'ble Judges : U.L. Bhat, J;P. Krishnamoorthy, J

Bench : Division Bench

Advocate : S. Parameswaran and K.K. appu, for the Appellant; T.R. Raman Pillai, K.P. Dandapani, C.V. Vasudevan and K.G. Dasarajan, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—Rajan Mathew was standing on the northern side of the road on 5.11.1980 at 9.30 a.m. Bus KLU 6573 came along the road driven in a rash and negligent manner and struck him down and he died instantaneously. His father filed a claim petition for compensation u/s 110-A of the Motor Vehicles Act against the driver, owner and insurer of the vehicle. Subsequently mother of the deceased was impleaded as second claimant. Their claim was to the tune of Rs. 1,00,760/-. Claim was opposed by the driver and insurer of the vehicle. The Tribunal accepted the genuineness of the case and passed an award for Rs. 54,000/- with interest and proportionate costs. This appeal is now filed by the insurer.

2. The first contention urged by learned counsel for the appellant is that there was collusion between the claimants on the one hand and owner and driver on the other hand before the Tribunal. No such complaint appears to have been made before the Tribunal. Owner was, no doubt, ex parte, but the driver engaged counsel, filed written statement and cross-examined PWs 1 to 3. Prima facie, there is no support for the allegation of collusion. At any rate, there is nothing to show that the appellant sought permission of the Tribunal to raise

defences on behalf of the insured. This contention is of no moment.

3. The next contention urged by learned counsel for the appellant is that the policy being an Act policy, the liability to third party is limited to Rs. 50,000/-. We have perused the averments in the written statement filed by the insurer. The written statement admits the insurance coverage against third party risk. However, the written statement does not allege that the policy is an Act policy or that there is a limitation as indicated in the Act. The insurer did not file copy of the policy either before the Tribunal or before this court. In these circumstances, this contention has to fail.

The appeal is, therefore, dismissed but without costs.