
(1992) 07 KL CK 0026
In the High Court Of Kerala
Case No : M.F.A. No. 58 of 1985

Oriental Insurance Co. Ltd.

APPELLANT

Vs

C.V. Joseph and Others

RESPONDENT

Date of Decision : 07-07-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1993) ACJ 44

Hon'ble Judges : T.L. Viswanatha Iyer, J; L. Manoharan, J

Bench : Division Bench

Advocate : S. Parameswaran, V.K. Viswabharan, for the Appellant; M. Unnikrishana Menon, Siby Mathew and P.V. Abraham, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Iyer, J.—This is an appeal by the Oriental Insurance Co. Ltd., the 3rd respondent in a claim petition u/s 110A of the Motor Vehicles Act, 1939. The claim was filed by respondent Nos. 1 and 2 herein, the parents of one Francis, who was killed in an accident which took place near Ollur on 5.7.1980. Francis was aged 17 years at that time and was studying in the Tenth Standard. The claim was for an amount of Rs. 77,000/-. But the award was made only for Rs. 26,000/-. It is this award that is challenged in this appeal by the insurance company. The insurance company does not challenge the quantum of the award. Its contention is limited, namely, that the liability of the insurance company is only to the extent of Rs. 5,000/-, as per the terms of the policy covering the vehicle and, therefore, the award should have limited the liability of the appellant to Rs. 5,000/- leaving the balance to be paid by the owner of the vehicle, namely, the 3rd respondent herein.

2. The appellant had taken this stand in the written statement which it had filed before the Tribunal that its liability cannot in any event exceed Rs. 5,000/-. But, no evidence was produced in support of the claim that its liability was limited to Rs. 5,000/-. The point appears to have been raised at the time of arguments that

the appellant's liability was limited to Rs. 5,000/- as the deceased was a passenger in the vehicle. The Tribunal noted that the deceased had been thrown out of the vehicle, that he was on the road when he was run over by the vehicle and, therefore, he was in the position of a third party and not that of a passenger, to whom alone the limitation of Rs. 5,000/- under the policy will operate. The Tribunal did not directly deal with the point whether the policy actually limited the liability of the appellant to Rs. 5,000/-.

3. The insurance policy was not produced by the appellant before the Tribunal. It has been held by the Supreme Court in *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, that the obligation to prove the limitation on the liability of an insurer is on the insurer itself for which purpose it must produce the policy. It is, therefore, the obligation of the appellant to produce the policy if it desired to establish that its liability was limited to Rs. 5,000/- in respect of the deceased person. But the appellant did not choose to produce the policy. There was thus absolutely no evidence before the Tribunal to come to the conclusion that the liability of the insurer was limited to Rs. 5,000/- and that award could be passed only to that extent vis-a-vis the insurer. But counsel for the appellant maintained that there was no dispute about this limitation in this policy, in support of which he referred to the fact that even the Tribunal discarded the appellant's argument only on the basis that the deceased ceased to be a passenger once he was thrown out of the bus and, therefore, the limitation which was applicable to a passenger did not operate so far as he was concerned.

4. We are not inclined to accept this contention. The fact that the Tribunal decided on the alternate plea cannot lead to any inference that the basic plea of a limitation in the policy is true. There is no finding of the Tribunal on this question and there was no evidence before it on which it could decide this question. There was no admission either on the part of the applicant. Counsel for the appellant was not able to point out any such admission either in the original application or in the evidence.

5. The fact that the Tribunal took a particular line of reasoning to overrule the plea of limited liability is not sufficient for us to hold that the policy was a limited one imposing liability only to the extent of Rs. 5,000/- on the appellant.

In the circumstances, the award made by the Tribunal making the appellant liable for the amount of Rs. 26,000/- is only to be upheld.

The appeal fails and is dismissed. No costs.