

(1991) 02 KL CK 0003
In the High Court Of Kerala

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Sreedharan and Others

RESPONDENT

Date of Decision : 26-02-1991

Acts Referred:

Citation : (1996) 1 ACC 429

Hon'ble Judges : U.L. Bhat, J;G.H. Guttal, J

Bench : Division Bench

Judgement

U.L. Bhat, J.—First respondent-claimant was traveling in bus KLR 7558 on 26.3.1979. The bus reached Kattachira at 8.15 a.m. and on account of the rash and negligent manner in which the bus was driven it fell into a paddy field and the claimant sustained injuries. On these allegations, he filed a petition claiming compensation of Rs. 77,517.60 from the driver, owner and insurer respectively of the bus. The claim was resisted on several grounds, but was allowed to the extent of Rs. 18,025/-. The Tribunal directed the insurer to pay the full amount awarded with interest and costs. The insurer, being aggrieved, has filed this appeal.

2. The only contention urged by learned Counsel for the appellant is that the insurance policy issued by the insurer is an Act policy with liability towards each passenger restricted to Rs. 5,000/- as contemplated in the Act and, therefore, the Tribunal was in error in directing the insurer to pay the entire amount awarded. It is true, as pointed out by learned Counsel for the appellant, that this contention was specifically taken in the counter filed by the insurer before the Tribunal; but then the insurer did not attempt to prove the contention by producing copy of the policy before the Tribunal. The appeal was filed as early as in 1984. Even during the last seven years when the appeal has been pending during in this Court, the insurer made no attempt to produce a copy of the policy. In these circumstances, we do not think the contention of the insurer that a liability higher than what is contemplated in the Act has not been undertaken in the policy cannot be accepted.

3. The claimant has filed Cross Objection seeking enhancement of the amount awarded. Learned Counsel for the Cross Objector contends that the sum of Rs. 5,000/- awarded as against the claim of Rs. 60,000/- towards loss of earning power is too meagre. It has to be noted that the claimant did not file an appeal against the award impleading the driver and owner of the vehicle. Claimant has filed Cross Objection in an appeal filed not by the owner or driver of the bus, but in an appeal filed by the insurer. In order to grant relief to the appellant it is not necessary to decide the controversy regarding the correctness of the amount. Hence the Cross Objection is not maintainable.

The Appeal and Cross Objection are dismissed, but without costs.