
(1988) 03 KL CK 0034
In the High Court Of Kerala
Case No : M.F.A. No. 414 of 1982

United India Insurance Co. Ltd.

APPELLANT

Vs

M.M. Ali and Others

RESPONDENT

Date of Decision : 24-03-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 110C(2A), 96(2)

Citation : (1989) ACJ 147 : (1989) 66 CompCas 186

Hon'ble Judges : V. Sivaraman Nair, J;P.K. Shamsuddin, J

Bench : Division Bench

Advocate : S. Parameswaran, for the Appellant; P. Ramanujam, for the Respondent

Final Decision : Dismissed

Judgement

Sivaraman Nair, J.—The insurer of a goods vehicle registered as MSL-6909 is the appellant. He was the third respondent in M.V.O.P. No. 760 of 1979, which was filed by respondents Nos. 1 and 2 herein before the Motor Accidents Claims Tribunal, Ernakulam, seeking compensation for the death of their son in a road accident which occurred at 9.15 a.m. on June 19, 1978. The owner and driver of the vehicle were respondents Nos. 1 and 2 in that application. The applicants claimed that the accident occurred due to the rash and negligent driving of the vehicle by the driver ; and that the owner, driver and the insurer were liable to compensate the claimants. It appears that the owner and driver did not seriously contest the claim before the Tribunal. Counsel for the appellant-insurer submits that in those circumstances, the appellant-insurer ought to have been permitted u/s 110C(2A)(ii) of the Motor Vehicles Act to defend the claim on all grounds which would have been available to the owner of the vehicle. Obviously, that plea was not specifically raised nor was Section 110C(2A) of the Act adverted to before the Tribunal. By the impugned award, the Tribunal allowed Rs. 24,000 as compensation for the death of the son of the applicants even though they had claimed Rs. 77,500.

2. In the present appeal, the applicant-insurer submits that the Tribunal went wrong in not allowing the appellant to defend the claim as permitted u/s 110C(2A) of the Motor Vehicles Act and that the amount awarded by the Tribunal is unrealistic and excessive.

3. As far as the first ground is concerned, we are not in a position to hold that even though the Tribunal would have been justified in passing an order u/s 110C(2A) of the Act, in the present case, we cannot now hold that the Tribunal has a duty, on its own, to permit the insurer to defend the claim on grounds which would otherwise have not been available to it. On the terms of section, it appears to us that it is necessary that the Tribunal should be satisfied that "(i) there is collusion between the person making the claim and the person against whom the claim is made, or (ii) person against whom the claim is made has failed to contest the claim". The Tribunal has to make a reasoned order directing the insurer to contest the claim on all or any of the grounds which would have been available to the person against whom the claim was made. Admittedly, no attempt was made to alert the Tribunal about any collusion between the parties or to seek a reasoned order allowing the insurer to defend the claim on grounds other than those which would ordinarily have been available to it u/s 96(2)(b) of the Motor Vehicles Act. We are of the opinion that the Tribunal cannot be faulted for not having exercised its power u/s 110C(2A) of the Motor Vehicles Act. In this view, we have also to hold that this appeal seeking to urge grounds other than those permissible u/s 96(2)(b) of the Motor Vehicles Act is devoid of merit.

4. The amount of Rs. 24,000 awarded as compensation for death of the son of the claimants cannot, in any manner, be considered excessive. We are satisfied that the Tribunal has taken all the relevant facts and circumstances in arriving at a just and fair amount as compensation. In the above view, the appeal has to be and the same is hereby, dismissed.

5. The appellant-insurer shall deposit the balance amount of compensation due to the applicants-respondents Nos. 1 and 2 herein before the Motor Accidents Claims Tribunal within a period not exceeding two months from today.

6. Issue photo copies of this judgment to counsel on both sides on usual terms.