

(2004) 01 KL CK 0019
In the High Court Of Kerala
Case No : M.F.A. No. 651 of 1995

Wilson

APPELLANT

Vs

Lalitha Bai Amma

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 173

Citation : (2004) 3 ACC 921 : (2005) ACJ 166 : (2004) 2 ILR (Ker) 127 : (2004) 2 KLT 636

Hon'ble Judges : K.A. Abdul Gafoor, J;J.M. James, J

Bench : Division Bench

Advocate : T.K.M. Unnithan and P.G. Ganappan, for the Appellant; V.N. Achutha Kurup, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—This appeal has been jointly filed by the insurer and the owner in the year 1995. Subsequently, it was held by the Apex Court in the decision reported in Chinnama v. Raju 2000 (2) KLT 155 that, "appeal would be maintainable by the driver or the owner and not by the insurer and, thus, a joint appeal when filed could be maintainable by the driver or the owner". In the light of the pronouncement, C.M.P. No. 928/2003 was filed by both the appellants together to strike of the first appellant in the appeal, viz., the New India Assurance Co. Ltd. This petition was allowed on 14th February, 2003. The driver was also deleted from the party array as per Order dated 14th February, 2003 in C.M.P.No. 443 of 2003.

2. Now the appeal is by the owner alone. The only contention of the insured/owner is that multiplier adopted by the Tribunal below is on a higher side at 23. It can at the best be only at 17 or 18. Therefore, the quantum of the compensation awarded is too high.

3. An appeal is provided u/s 173 of the Motor Vehicles Act, 1988. It can only be

by a person aggrieved by an award passed by the Tribunal. The Supreme Court in the decision reported in Narendra Kumar and Another Vs. Yarenissa and Others, has held as follows:

"If for some reason or the other claimants desire to execute the award against the tortfeasors because they are not in a position to recover the money from the insurer the law does not preclude them from doing so and, therefore, so long as the award or decree makes them liable to pay the amount of compensation they are aggrieved persons within the meaning of Section 110-D and would be entitled to prefer an appeal".

4. In this appeal, the owner does not have a case that in addition to the liability to be met by the insurer, the insured/owner will also be called upon to pay any amount to claimant. In such circumstances, going by the above observation of the Supreme Court, it cannot be said that the owner is an aggrieved person to prefer an appeal, as the entire award will be satisfied by the insured himself, who had withdrawn from the appeal dropping the challenge against the award.

5. Even going by Section 149, the owner will be aggrieved even if the insurer is bound to pay the amount awarded to the claimant only in case there is any violation of the policy conditions. Admittedly, there is no contention that there was any violation of the policy conditions before the Tribunal. So, on that count also, the insured/owner cannot, be said to be an aggrieved person to prefer an appeal u/s 173.

6. Even on merit also, the appeal reveals no ground for interference. The victim was the only son of the first claimant, a widow, aged 42, and the son was aged only 21 years. Moreover, there were two younger sisters to the victim to be married away at that time. In such circumstances, if the Tribunal has adopted 23 as the multiplier at that time, in 1991, it cannot be said to be too unjustified to invite interference in the aforesaid circumstances. The appeal fails, dismissed.