

Latheef Vs. Cletus

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Court : Kerala

Decided On : Feb-04-2013

Judge : Honourable Mr.Justice Harun-Ul-Rashid

Appellant : Latheef

Respondent : Cletus

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE HARUN-UL-RASHID MONDAY, THE 4TH DAY OF FEBRUARY 2013 15TH MAGHA 193 MACA.No. 749 of 2011 () ----- AGAINST THE ORDER/JUDGMENT IN OPMV.507/2006 of ADDL.D.C. & MACT, PARAVUR DATED 13 12-2010 APPELLANTS/1ST AND 2ND RESPONDENTS: ----- 1. MR. ABDUL LATHEEF, AGED 6 YEARS S/O.ABDUL KHADER, H.NO.15/1578 A, PALAKKAMATTOM UNITY ROAD, CHANGAPUZHA NAGAR PO, KALAMASSERY.

2. FEMINAS, D/O.ABDUL LATHEEF, H.NO.15/1578 A, PALAKKAMATTOM, UNITY ROAD CHANGAPUZHA NAGAR PO, KALAMASSERY. BY ADV. SRI.M.A.SHIHAB RESPONDENTS/PETITIONER/3RD RESPONDENT: ----- 1. CLETUS, S/O.CHACKO, CHIRAKKAPARAMBIL HOUSE, EMS ROAD, N .KALAMASSERY.

2. NATIONAL INSURANCE CO.LTD T.P CELL, ALUVA. R-2 BY ADV. SRI.LAL GEORGE THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04-02-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: a/- HARUN-UL-RASHID,J.

----- M.A.C.A No.749 OF
201.----- Dated this the 4th day of February
2013 JUDGMENT Respondents 1 and 2 in O.P.(MV) No.507/2006 on the file of
the Motor Accidents Claims Tribunal, N.Paravur are the appellants. The appeal is
directed against the Award dated 13.12.2010 in the above said case.

2. The first respondent here is the claimant. The first respondent sustained injuries in the motor accident that took place on 7.5.2006 The Tribunal allowed the claimant to realise Rs.20371/- from the respondents 1 to 3. The third respondent being the insurer is directed to produce crossed cheque for the amount in the name of the petitioner within one month from today. The third respondent is directed to execute the award as against the 2nd respondent. On the application filed by the Insurance Company, the first respondent produced the copy of driving licence before the court below which is marked as Ext.B2. The Tribunal found that Ext.B2 is in respect of the driving licence to drive motor cycle. The vehicle involved in the accident is a car. The Tribunal therefore held that since the copy of the policy permits only those persons who are holding valid driving licence to M.A.C.A.No.749/2011 2 drive the vehicle which amounts to violation of the policy condition, the court held that the remedy open to the Insurance Company is to pay compensation amount to the petitioner and then to realise it from the 2nd respondent owner by executing the award.

3. It is contended that the first appellant has been possessing the LMV licence since 1998. The appellant produced a copy of the driving licence dated 28.5.1998 as Annexure A1. It is submitted that when the licence was renewed, the licensing authority mistakenly omitted to have the LMV included in the licence and they had only written the motor cycle license valid from 15.8.2003 to 14.8.2008. It is submitted that the mistake was not noticed at the relevant time. Copy of the driving licence dated 20.8.2003 is produced as Annexure A2. Annexure A2 is the copy of

Ext.B2 licence. On noticing the mistake, it is submitted that the appellant approached the licensing authority pointing out the mistake. The appellant produced Ext.A3 licence dated 13.12.2010. The award is dated 13.12.2010. It is submitted that he could not produce Ext.A3 licence before the Tribunal. It is seen that the first appellant had LMV licence on the date of accident i.e. on 7.5.2006. Only copies of the above referred documents were produced before this Court. It is for the Tribunal to consider the contentions raised by the appellant/owner of the vehicle. M.A.C.A.No.749/201

4. In the circumstance, this Court is of the view that the matter requires reconsideration. The appeal is allowed. The award dated 13.12.2010 in O.P.(MV) No.507/2006 on the file of the Motor Accidents Claims Tribunal, N. Paravur is set aside. The case is remanded to the court below for consideration afresh. The court below shall dispose of the original petition within a period of six months from the date of appearance of the parties. The appellants and the 2nd respondent Insurance Company shall appear before the Tribunal on 25.2.2013. The counsel shall inform the parties. Sd/- HARUN-UL-RASHID JUDGE al/-

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