Amina Vs. C.P.Mohammed

Amina Vs. C.P.Mohammed

SooperKanoon Citation : sooperkanoon.com/1096950

Court : Kerala

Decided On : Nov-04-2013

Judge : Honourable Mr.Justice S.S.Satheesachandran

Appellant : Amina

Respondent : C.P.Mohammed

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN MONDAY, THE4H DAY OF NOVEMBER201313TH KARTHIKA, 1935 MACA.No. 1952 of 2012 () ------------------------ AGAINST THE AWARD IN OP(MV) 1288/2007 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, MANJERI ================= APPELLANT/PETITIONER: ------------------------------------ AMINA, AGED40YEARS W/O. MOHAMMEDALI, MOOLAYIL HOUSE ALIPARAMBA.P.O., PERINTHALMANNA MALAPPURAM DISTRICT. BY ADVS.SRI.P.SAMSUDIN SMT.NIMA JACOB RESPONDENTS/RESPONDENTS2TO5 --- 1. C.P.MOHAMMED, S/O. POCKER CHERAMPURATH HOUSE, VELLILA P.O. MANKADA, MALAPPURAM DISTRICT-679324.

2. UNITED INDIA INSURANCE COMPANY LIMITED BRANCH OFFICER, MANJERI.P.O. MALAPPURAM DISTRICT, PIN-676121. (INSURER) 3. KADEEJA, W/O. LATE MUHAMED KALATHINGAL HOUSE, POOZHIKUNNU

VALLIKKAPPATTA.P.O., MANKADA MALAPPURAM DISTRICT-679324.

4. MUMTHAS, KALATHINGAL HOUSE POOZHIKKUNNU, VALLIKKAPATA.P.O. MANKADA, MALAPPURAM DISTRICT-679324. R1 BY ADVS. SRI.K.M.SATHYANATHA MENON SMT. KAVERY S. THAMPI R2 BY ADVS. SRI.P.SANKARANKUTTY NAIR SRI.JOHN JOSEPH VETTIKAD, SC THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON0411-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: SD S.S. SATHEESACHANDRAN, J., -------------------------------------- M.A.C.A.No.1952 OF2012-------------------------------------- Dated this the 4th day of November, 2013.

JUDGMENT

Appellant is the claimant in an application for compensation. She claimed compensation for the injuries sustained in a motor accident.

2. Her case was that while she was travelling as a passenger in a bus, seated close to the body of bus, a lorry passing through dashed against the bus causing her some injuries including fracture of bone to one of her upper limbs. Occurrence involving two vehicles took place on 02.10.2000 and consequent to the injuries she was hospitalised for nine days and on her statement a crime was registered by police. However, the claim for loss and injuries suffered, was prosecuted by the claimant only after a span of seven years. In her claim only the driver, owner and insurer of the lorry involved in the occurrence were impleaded as respondents. Second respondent, owner, was reported dead and his legal heirs were impleaded as additional respondents 4 and 5. Third respondent, insurer, alone contested the proceedings. Lapse of time after the occurrence was projected by the insurance company as a serious hurdle in tracing MA.C.A. No. 1952/2012 2 out the policy particulars, and its inability to affirm or deny policy coverage for the vehicle. The company expressed suspicion over the occurrence involving the lorry to dispute the claim canvassed seven years after the occurrence.

3. Claimant to substantiate the occurrence produced only Ext.A1, copy of the FIR of the crime registered over the occurrence. The tribunal not being satisfied with that material concluded that the claimant failed to prove that she suffered injuries

in the motor accident involving the lorry alleged, and that resulted in dismissal of her claim.

4. I heard counsel on both sides. Before me learned counsel for appellant produced certified copies of charge sheet file in the crime registered under Ext.A1 FIR and also judgment rendered by Judicial First Class Magistrate-I, Perinthalmanna against first respondent, driver of the lorry, who was proceeded as accused for offences taken cognizance under the above charge. First respondent had pleaded guilty to the charge and he was convicted and sentenced to pay fine with default term of imprisonment, is borne out from the copy of judgment produced. The above documents would, prima facie, show that the suspicion MA.C.A. No. 1952/2012 3 entertained by insurance company over the occurrence is, prima facie, without merit. Further more when Ext.A1 FIR was produced, and particulars of the crime were stated in the application for compensation, company was expected to conduct enquiry whether such a crime had been registered and if so the result of investigation thereof. Merely because the company has disputed or raised some suspicion over the occurrence involving the motor vehicle, allegedly, as covered by its policy tribunal cannot jump to the conclusion that the accident is not true. There was delay in filing the claim as such cannot be a ground to doubt the occurrence when the claimant had produced Ext.A1 FIR, crime registered by police over occurrence on recording her statement. In the light of charge sheet filed over the occurrence after completion of investigation and also judgment rendered by the court convicting first respondent proceeded as the accused in that crime, whatever suspicion entertained by the insurance company over the occurrence stand totally dispelled and that cannot be a reason for rejecting the claim of applicant if she is otherwise entitled to get compensation for loss and injuries sustained. MA.C.A. No. 1952/2012 4 5. In the given facts of the case, I find that the claimant has to be provided an opportunity to produce the charge sheet and other records relating to the crime before the tribunal to have her claim adjudicated afresh on merits. Insurance company has to report after verification of its registers whether the vehicle involved has valid insurance coverage at the time of occurrence. No doubt, it can also canvass whatever defences available under Section 149(2)of the M.V. Act to exonerate it from liability even if the vehicle had coverage.

6. Setting aside the order dismissing the claim, tribunal is directed to restore the petition on file and dispose it afresh on merits in accordance with law after providing opportunity to both sides to lead evidence. Parties are directed to appear before the tribunal on 09.12.2013. Sd/- S.S. SATHEESACHANDRAN JUDGE sd // True Copy // P.A. to Judge