Radhadevi vs Mohanan

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SooperKanoon Citation : sooperkanoon.com/1389100

Court : Kerala

Decided On : Mar-01-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : MACA/3008/2022

Appellant : Radhadevi

Respondent : Mohanan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA, 1944 AGAINST THE AWARD IN OPMV 1798/2014 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,TRIVANDRUM APPELLANT/APPLICANTS: 1 RADHADEVI AGED 52 YEARS W/O MOHANAN, KUNNU BANGLOW PUTHEN VEEDU, MUKKOLA P.O., THIRUVANANTHAPURAM, PIN - 695005 2 ARUN M.R. AGED 30 YEARS W/O MOHANAN, RESIDING AT KUNNU BANGLOW PUTHEN VEEDU, MUKKOLA P.O., THIRUVANANTHAPURAM, PIN - 695005 BY ADVS. R.T.PRADEEP M.BINDUDAS K.C.HARISH RESPONDENTS/RESPONDENTS:

1 MOHANAN S/O GOPI, 5/557, KUNNUMBANGLOW PUTHEN VEEDU, KUDAPPANAKUNNU, MUKKOLA P.O., THIRUVANANTHAPURAM, PIN - 2 THE MANAGER, TATA AIG INSURANCE CO. LTD. REMA PLAZA, NEAR AYYAPPAN COVIL, S.S. COVIL ROAD, THAMPANOOR, THIRUVANANTHAPURAM, PIN - 695001 BY ADVS. GEORGE A.CHERIAN LATHA SUSAN CHERIAN(K/412/2008) GEORGE CHERIAN (SR.)(G-81)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 01.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

I am disposing of this appeal today at the request of both sides, who also prayed that it be formally admitted. This appeal is thus admitted and is being disposed of finally.

2. Even though various allegations,

averments and assertions have been made and urged in this appeal, Sri.R.T.Pradeep - learned counsel for the appellant, confined his submissions to the extent that his client is entitled to be covered under the Personal Accident Cover of Ext.A7 Policy, issued by the Insurance Company.

His argument was that, since his client

caused without the intervention of any another person, the principles postulated by the Honble Supreme Court in Ningamma and Another v. United India Insurance Company Limited [(2009) 13 SCC 710] may apply as has been found by the Tribunal; but that it erred in not considering whether his client would still be entitled to insurance under

the Personal Accident Cover eligible to the owner. He said that even going by Ningamma (supra), the rider of the vehicle would step into the shoes of the owner in the case of the accident; and therefore, that when a Personal Accident Cover, admittedly, insures the owner, said Cover should be axiomatically available to the rider also. He concluded saying that that the

judgment of the Honble Supreme Court in

Ramkhiladi and Another v. United India Insurance Company Ltd and another [2020 ACJ, 627] would enable his client to substantiate his afore plea.

3. Sri.George A.Cherian - learned Senior Counsel, instructed by Smt.Latha Susan Cherian, learned counsel for the Insurance Company, however, argued that Ext.A7 - Policy would luculently show that the Personal Accident Cover under it applies only to the owner and not to

anyone else and added that there are certain other specific conditions mentioned therein and it is only if they are all satisfied, will even the owner become eligible to obtain compensation.

4. I notice from the files that this Court has not yet issued notice to respondent No.1. However, I am of the view that it will not be

necessary because, I propose to remand this matter for reconsideration of the question as to whether the Personal Accident Cover available to the owner of the vehicle would be applicable to the driver also, going by the specific terms of Ext.A7 Insurance Policy.

5. I propose as afore because the afore

issue has not been considered by the Tribunal in any manner, but it has gone with the declarations in Ningamma (supra), to hold that when the rider causes the accident on his own, he would not be entitled to any insurance cover under the policy; but without assessing whether he would still be entitled to any benefit under the Personal Accident Cover, admittedly available to the owner of the vehicle.

> In the afore circumstances, I record that this has not been opposed by the learned Senior Counsel for the Insurance Company who, however,

pleaded that his client be reserved full right and opportunity before the Tribunal to establish that the appellant is not entitled to any benefit at all under the policy. I partly allow this appeal and set aside the impugned Award of the Tribunal to the extent to which it has not considered the applicability of the Personal Accident Cover to the appellant under Ext.A7. The learned Tribunal is, therefore, directed to reconsider solely this aspect, after hearing the parties and after affording them necessary opportunities, thus culminating in a fresh Award as expeditiously as is possible, but not later than six months from the date of receipt of a copy of this judgment. For this purpose, the parties shall appear before it on 20.03.2023 at 11 A.M. I, however, make it clear that this Court has not found in favour or against the appellant and that the afore issue impelled by him, is left to be considered by the Tribunal denovo.

Sd/- DEVAN RAMACHANDRAN JUDGE SAS