

Mumthas vs Rafeek

Mumthas vs Rafeek

SooperKanoon Citation : sooperkanoon.com/1445167

Court : Kerala

Decided On : Jul-12-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : MACA/628/2022

Appellant : Mumthas

Respondent : Rafeek

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 12TH DAY OF JULY 2022 / 21ST ASHADHA, 1944
MACA NO. 628 OF 2022 AGAINST THE AWARD DT.24.02.2012 IN
OPMV 1107/2009 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,
KOLLAM APPELLANT/ADDL. 4TH RESPONDENT: MUMTHAS, AGED
49 YEARS W/O. NAJIM, KINARUVILA VEEDU, BHARANIKKAVU,
SASTHAMCOTTA P.O., KOLLAM-690521. BY ADVS. K.S.MANU
(PUNUKKONNOOR) K.B.UDAYAKUMAR RESPONDENTS/2ND AND
3RD RESPONDENTS & PETITIONERS:

1 RAFEEL, AGED 36 YEARS, S/O. HAMEED, ALLYADEA AYYATHU
VEEDU, THEKKEMURI, SOORANADU VILLAGE, KARUNAGAPPALLY-
690 522. 2 THE BRANCH MANAGER, ORIENTAL INSURANCE
COMPANY LTD, KOLLAM-691 001. 3 RAVEENDRAN PILLAI AGED 64
YEARS S/O. THANKAMMA, ADITHYA BHAVAN, MULAVANA P.O., 4
BALACHANDRAN PILLAI, AGED 64 YEARS, S/O. THANKAMMA,
ADITHYA BHAVAN, MULAVANA P.O., 5 RETNAKUMARI AMMA, AGED
62 YEARS, D/O. THANKAMMA, ADITHYA BHAVAN, MULAVANA P.O.,

M.A.C.A.No.628 of 2022 2 6 RADHAKRISHNA PILLAI, AGED 58
YEARS, S/O. THANKAMMA, ADITHYA BHAVAN, MULAVANA P.O., 7
SARASWATHY AMMA, AGED 55 YEARS, D/O. THANKAMMA,
ADITHYA BHAVAN, MULAVANA P.O., FOR R SMT.K.S.SANTHI THIS
MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 12.07.2022, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: M.A.C.A.No.628 of 2022 3 C.R

A. BADHARUDEEN, J.

===== M.A.C.A.No.628 of 2022
===== Dated this the 12th day of
July, 2022

JUDGMENT

This appeal arises out of award in O.P(MV).No.1107/2009 dated 24.02.2012 on the file of Motor Accidents Claims Tribunal, Kollam at the instance of the 4th respondent, the owner of the offending vehicle, challenging recovery right granted on the ground that there was no fitness certificate as well as a driving licence for the driver at the time of the accident.

2. Short facts : One Thankamma died in consequence of a

motor accident occurred on 06.07.2008 while she was travelling as a passenger in KL-02/L 155 stage carriage bus. Accordingly, her legal heirs lodged petition under

Section 163A of the Motor Vehicles Act. The deceased was a cashew labourer and was earning Rs.3,500/- per month. M.A.C.A.No.628 of 2022 4

3. The Tribunal recorded the evidence in this matter. PW1

examined and Exts.A1 to A10 marked on the side of the appellant. On appreciation of evidence, the Tribunal granted Rs.56,500/- as against the claim of Rs.1,50,000/-.

4. It is argued by the learned counsel for the appellant that

the Tribunal granted recovery right after granting compensation to the tune of Rs.56,500/- on the ground that the driver of the vehicle did not possess a valid driving licence and also the vehicle had no badge at the time of accident. The learned counsel for the appellant produced Annexure-A1 letter given by the Joint Regional Transport Officer, Karunagappally dated 06.11.2021 stating that in between 24.03.2008 to 16.04.2009, there was valid fitness certificate for the

vehicle bearing Reg.No.KL-02-L-155. Similarly, the appellant produced Annexure-A2 driving licence in the name of Rafeek showing that he had licence at the time of the accident as well.

5. A pertinent aspect to be noted in this case is the finding entered into by the Tribunal as espoused in para.19 of the award. Para.19 of the award is extracted here under: M.A.C.A.No.628 of 2022 5

19. Issue No.6:-- In the written statement R3 raised a contention that there was no fitness certificate for the vehicle. The vehicle had no fitness certificate and there was no driving licence for R2. Therefore, the insurance company is not liable to indemnify R4. The insurance policy with respect to the vehicle is admitted. So R3 shall pay the money and recover it from R4 who is the insured of the vehicle. Issue No.6 is answered accordingly.

A cursory reading of para.19 would convince that recovery right was granted on mere asking. That is to say, though absence of driving licence and fitness certificate are negative facts, the proof of the same is by giving direction to the owner and driver of the alleged offending vehicle to produce the same. If, on getting notice the owner and the driver fail to produce the said documents, adverse inference regarding absence of the said documents can be taken. But such a procedure, not adopted in this case and the insurer not even filed any petition in this regard. Therefore, grant of recovery right in favour of the insurer from the insured allowed in this case is without support of any materials. In this context, it is

held that mere pleadings raised by the insurer stating that there was

no driving licence or badge to the driver of the vehicle and there M.A.C.A.No.628 of 2022 6 was no fitness certificate or permit to the vehicle is insufficient to hold so. The said contention must be established by adducing the

best evidence. In cases involving absence of driving licence, badge, fitness certificate and permit etc., being negative facts, the same contention shall be established by giving direction to the owner and driver for cause production of the said documents. On notice, if failure on the part of the owner and insurer in producing the documents is established, an adverse inference has to be drawn finding absence of the said documents and by giving emphasis on such adverse inference, recovery right can be granted. In fact, in this case, recovery right was granted without opting the said exercise and, therefore, the said finding is illegal. Since the said documents are now produced before this Court, the finding otherwise is erroneous.

6. Therefore, the recovery right granted by the Tribunal to

the 3rd respondent insurer on the finding that there was no driving licence to the driver of the vehicle is found to be erroneous. Therefore, the said right of recovery granted by the Tribunal stands set aside. M.A.C.A.No.628 of 2022 7 In the result, this appeal stands allowed. It is ordered that the compensation granted by the

Tribunal shall be paid by the insurance company and the appellant herein is not liable to pay compensation on the ground of violation of policy conditions. If any amount deposited by way of statutory deposit by the appellant, the same shall be refunded to the appellant, forthwith. Sd/- (A. BADHARUDEEN, JUDGE) rtr/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com