

Rathidevi, vs Sindhya Xavier,

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Court : Kerala Orders

Decided On : Nov-29-2021

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : MACA/2990/2021

Appellant : Rathidevi,

Respondent : Sindhya Xavier,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 29TH DAY OF NOVEMBER 2021 / 8TH AGRAHAYANA, 1943 AGAINST THE ORDER/JUDGMENT IN OPMV 751/2013 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ALAPPUZHA APPELLANT/S: RATHIDEVI, AGED 55 YEARS W/O.SATHEESAN, AYYAPPA KRIPA, THURAVOOR P.O., PIN- 688 537, KUTHIYATHODU, CHERTHALA, ALAPPUZHA DISTRICT.

BY ADVS. SHAJI THANKAPPAN P.YEMUNA SUBIN K SUDHEER RESPONDENT/S: 1 SINDHYA XAVIER, AGED 45 YEARS W/O.LATE XAVIER, MATTAMMAL HOUSE, ERAMALLOOR P.O., 2 TOM JOB

VIYAN, AGED 24 YEARS S/O.LATE XAVIER, MATTAMMAL HOUSE, ERAMALLOOR P.O., 3 ROJA XAVIER, AGED 21 YEARS D/O.LATE XAVIER, MATTAMMAL HOUSE, ERAMALLOOR P.O., 4 SAJEEVAN, S/O.SREEDHARAN PILLAI, JAYASREE MANDIRAM, PANAVALLY P.O., CHERTHALA, ALAPPUZHA DISTRICT, PIN-688 526.

5 THE UNTED INDIA INSURANCE CO.LTD., REPRESENTED BY DIVISIONAL MANAGER, DIVISIONAL OFFICE, ALAPPUZHA, THROUGH REGIONAL MANAGER, REGIONAL OFFICE, UNITED INDIA INSURANCE CO.LTD., HOSPITAL ROAD, ERNAKULAM, PIN-682 011. THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 29.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This Court had posted this appeal to hear on the question of maintainability because in clause (8) of paragraph 33 of the award, the Tribunal has permitted the 3rd respondent to recover the award amount from the 2 nd respondent, but the appeal is filed by the 1 st respondent. However, in paragraph 32 of the award, the Tribunal has

held that the 3rd respondent - insurer would be able to

recover the award amount from the 1 st respondent - insured -the appellant.

2. After arguing for sometime, the learned counsel for

the appellant submits that he may be permitted to withdraw the appeal with leave to file a fresh appeal by both the respondents 1 and 2/owner and driver of the offending vehicle. On consideration of the impugned award and the submissions advanced before this Court, I am inclined to accept the prayer of the learned counsel for the appellant. In the result, the appeal is dismissed as withdrawn granting leave to the appellant to file a fresh appeal on the same cause of action by also impleading the 2 nd respondent. The Registry shall return the deposit

receipt dated 12.07.2021 to the appellant in accordance with law. It is also made clear that the appellant can seek for condonation of delay in filing the fresh appeal in view of the filing and bonafide prosecution of this appeal. Sd/- C.S.DIAS, JUDGE rkc/29.11.2021

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