

**Kamarban Beevi Vs. K.G. Radhakrishnan and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/728655](http://sooperkanoon.com/728655)

**Court :** Kerala

**Decided On :** Nov-10-1989

**Reported in :** I(1996)ACC488

**Judge :** K.P. Radhakrishna Menon and; T.V. Ratnakrishnan, JJ.

**Appellant :** Kamarban Beevi

**Respondent :** K.G. Radhakrishnan and ors.

**Judgement :**

K.P. Radhakrishna Menon, J.

1. The petitioner in O.P. (M.V.) 804/79 before the M.A.C.T. Trivandrum, is the appellant.

2. Her application under Section 110(A) of the Motor Vehicles Act for compensation stands dismissed by the judgment under challenge. The accident occurred on 28.12.1977 on the Quilon-Trivandrum national highway at Vendor Junction, near Chinnakkada. The description of the accident is this: The husband of the appellant was traveling in a cycle-rickshaw, the lorry bearing No. K.L.Q. 9479 driven by the 2nd respondent hit the cycle-rickshaw resulting in the victim sustaining injuries to which he succumbed. According to the appellant, the accident occurred due to the rash and negligent driving of the 2nd respondent. Respondents 1 and 2 disputed the contention of the appellant that it was due to the rash and negligent driving of the 2nd respondent, the accident occurred. It is further stated therein that the rickshaw was being driven by the deceased who had no licence, rashly and negligently. The Insurance Company on the other hand contended that there was no insurance coverage to the lorry on the date of the accident. Hence the Company is not liable.

3. The discussion in the judgment under attack would show that even the Tribunal was not certain as to whether a cycle-rickshaw or auto-rickshaw got involved in the accident. At a particular stage, the reference is to a cycle-rickshaw and the husband of the appellant was a passenger. Yet at another place, the reference is to an auto-rickshaw and the husband of the appellant was driving the autorickshaw without a licence.

4. From what is stated above, it is clear that the Tribunal has not approached the issue in the right perspective. To put it differently, neither the case of the appellant nor the case of the contesting respondents, it could be said, has duly been considered. Under these circumstances, the judgment requires to be set aside. We accordingly set aside the same and remand the claim petition to the Tribunal for a denovo consideration and disposal.

5. The Tribunal shall give the parties to the proceedings an opportunity to adduce fresh evidence, in support of their respective contentions.

The appeal is allowed to the extent indicated above. No costs.

The parties shall appear before the Tribunal on 21st December, 1989.

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