

(2013) 08 KL CK 0054

High Court Of Kerala

Case No: MACA. No. 671 of 2010

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Kumari Bindu L. and
Radhakrishnan

RESPONDENT

Date of Decision: Aug. 1, 2013

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A

Hon'ble Judges: Thomas P. Joseph, J

Bench: Single Bench

Advocate: V.P.K. Panicker, for the Appellant;

Judgement

Thomas P. Joseph, J.

Respondents 1 and 2 are served by paper publication. There is no response. The appeal arises from the award dated 14.10.2009 in O.P. (M.V.) No. 341 of 2004 of the Motor Accident Claims Tribunal, Neyyattinkara (for short, "the Tribunal"). The second respondent, while riding the motor cycle belonging to the first respondent on 23.10.2003 met with an accident and sustained injuries. The second respondent claimed compensation under Sec. 163A of the Motor Vehicles Act, 1988 (for short, "the MV Act"). According to the second respondent, while he was riding the motor cycle, a cyclist abruptly crossed the road, he applied break, the motor cycle skidded, he fell down and sustained injuries. The Tribunal accepted that version of the second respondent and awarded compensation. Appellant and the first respondent were made liable. Appellant was directed to pay the amount. Appellant/insurer of the vehicle is aggrieved.

2. Learned counsel has contended that as the second respondent has no case that he was an employee of the first respondent/owner/insured, the second respondent must step into the shoe of the first respondent. It is submitted that as the policy does not cover personal injury to the first respondent, appellant is not liable to indemnify the second respondent. Reliance is placed on the decision in [Ningamma](#)

[and Another Vs. United India Insurance Co. Ltd.,](#) followed by the Full Bench of this Court in [Oriental Insurance Co. Ltd. Vs. Joseph,](#) .

3. There is no evidence to show either that the second respondent was employed under the first respondent or that he was riding the motor cycle in the course of such employment. There is also no evidence to show that policy covers personal injury to the second respondent. In that situation, the second respondent while riding the motor cycle must be deemed to have stepped into the shoe of the first respondent/owner/insured. In the light of the decision in Ningamma Vs. United Insurance Co. Ltd. (supra) followed by Full Bench in Oriental Insurance Co. Ltd. Vs. Joseph (supra), in such situation unless there is coverage for the insured for the personal injury he suffered, appellant cannot be held liable. Finding of the Tribunal that the appellant is liable cannot stand and is liable to be set aside. In view of the above, it is not necessary to go into other contentions raised by the appellant.

Resultantly this appeal is allowed as under:

(i) Finding of the Motor Accident Claims Tribunal, Neyyattinkara in the award dated 14.10.2009 in O.P. (M.V.) No. 341 of 2004 that the appellant is liable and the direction to the appellant to deposit the amount are set aside. The original petition will stand dismissed as against the appellant.

(ii) It is open to the second respondent to recover the amount awarded by the Tribunal from the first respondent.

(iii) Appellant shall suffer its cost in the appeal.

All pending interlocutory applications will stand dismissed.