

Kerala High Court

The Oriental Insurance Co. Ltd vs K. Hameed on 8 February, 2011

IN THE HIGH COURT OF KERALA AT ERNAKULAM

MACA.No. 2339 of 2010()

1. THE ORIENTAL INSURANCE CO. LTD.,
... Petitioner

Vs

1. K. HAMEED, S/O. AHAMMED (LATE),
... Respondent

2. F.H. NAZEER AHAMMED, S/O. F.A.HUSSAIN,

3. V. UMMER, S/O. MOIDEEN,

For Petitioner :SRI.A.R.GEORGE

For Respondent :SRI.ZUBAIR PULIKKOOOL

The Hon'ble MR. Justice M.N.KRISHNAN

Dated :08/02/2011

O R D E R

M.N. KRISHNAN, J.

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M.A.C.A. NO. 2339 OF 2010

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Dated this the 8th day of February, 2011.

J U D G M E N T

This appeal is preferred against the award of the Motor Accidents Claims Tribunal, Vatakara in O.P.(MV)398/07. The claimant would allege before Court that while he was standing on the extremity of the road a goods auto rickshaw hit on him resulting in injuries to him. The Tribunal on a consideration of the materials granted a compensation of Rs.16,150/-. Aggrieved by the same the insurance company has come up in appeal.

2. Heard the learned counsel for the appellant as well as the claimant. It is the case of the insurance company that as seen from the wound certificate the cause of injury is written as on account of the capsize of a goods M.A.C.A. 2339 OF 2010 vehicle. The statement in the wound certificate does not indicate about the pedestrian being hit by an auto rickshaw. No police case is registered, no private complaint is filed and therefore there had been no investigation on the criminal side at all with respect to this case. The only available materials is Ext.A1, the wound certificate and the evidence of PW1. I am afraid that the Tribunal should not have jumped to the conclusion when Ext.A1 stares at the face of the claimant. There must be some materials to convince the Court that the accident had taken place while he was standing on the road side. When a goods auto rickshaw capsized and a person sustains injury certainly it will be a road traffic accident but the compensation will be different with respect to liability of the insurance company because they would not be M.A.C.A. 2339 OF 2010 liable to pay compensation. Unfortunately the Tribunal has not applied its mind in that direction and that has resulted in the mis- carriage of justice. Therefore I set aside the award of the Tribunal and remit the case back to the Tribunal with a direction to all concerned to produce both documentary as well as oral evidence in support of their respective contentions and then dispose of the matter in accordance with law. Parties are directed to appear before the Tribunal on 15.3.2011. The amount in deposit shall remain there until a fresh decision is taken in the matter.

M.N. KRISHNAN, JUDGE.

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