
(2004) 08 KL CK 0016

In the High Court Of Kerala

Case No : M.F.A. No"s. 421 and 1466 of 1988 and O.P. No. 20781 of 1998

Biju K. Francis

APPELLANT

Vs

K.S.R.T.C.

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Citation : (2005) 3 ACC 479 : (2005) ACJ 1073 : (2005) 1 KLT 579

Hon'ble Judges : K. Thankappan, J;J.B. Koshy, J

Bench : Division Bench

Advocate : T.V. George and Linda George, for the Appellant; T. Ravikumar, for the Respondent

Judgement

J.B. Koshy, J.—Both these appeals are filed against the award passed by the Motor Accidents Claims Tribunal, Thodupuzha in O.P. (MV) No. 33 of 1995. M.F.A. No. 421 of 1998 is filed by the claimant questioning the adequacy of the quantum of compensation awarded by the Tribunal and M.F.A. No. 1466 of 1998 is filed by the Kerala State Road Transport Corporation, the respondent before the Tribunal, contending that the compensation awarded is excessive and arbitrary and also for exonerating the K.S.R.T.C. from paying the compensation. When execution proceedings were taken for realising the amount awarded, the Corporation filed O.P. No. 20781 of 1998 for a direction to the second respondent not to attach the movable or immovable properties of the Corporation for realisation of the award passed in O.P. (MV) No. 3 of 1995. Both the appeals and the Original Petition are being heard together.

2. The accident as per the claim petition occurred on 5.12.1978 at 4.15 p.m. while the appellant in M.F.A. No. 421 of 1998 was walking home from school. According to him when he reached in front of the Bishop Vayalil Medical Centre, Moolamattom, a K.S.R.T.C. bus bearing Registration No. N-47 owned by the respondent came in a rash and negligent manner and ran over his left leg causing serious crush injury. The Tribunal found that the accident occurred due to the negligence of the driver of the K.S.R.T.C. bus and awarded a compensation of

Rs. 1,64,650/- against a claim of Rs. 4,00,000/-.

3. One objection taken by the learned counsel appearing for the Corporation is that the accident alleged to have occurred in 1978 and the claim petition was filed only on 14.1.1995 and the claim petition is barred by limitation. Even though the accident occurred in 1978, claim petition was filed after 1988 Act came into force. There is no time limit for filing claim petition under the Motor Vehicles Act, 1988. The original time limit prescribed was omitted by the Motor Vehicles (Amendment) Act, 1994 which came into force on 14.11.1994. The Supreme Court in *Dhannalal Vs. D.P. Vijayvargiya and Others*, held that the Parliament in its wisdom has taken away the time limit prescribed in filing claim petition before the Motor Accidents Claims Tribunal in all pending matters also on the date of amendment. Even if there is no limitation, claim petition cannot be filed without sufficient reasons after many years since the respondents will not be in a position to disprove the allegation at that distance of time. In other words, a stale claim petition need not be treated at par with the claim petition filed within a reasonable time. In such cases, burden is heavy on the part of the claimant to prove that the accident occurred in the manner alleged.

4. In this case, the accident is alleged to have occurred on 5.12.1978. At that time, claimant was only a five year school student. His parents did not file a claim on his behalf in time. He attained majority in 1991. But, claim petition was filed only in 1995, after 16 and a half years of the alleged accident and four years after he attained majority. Driver of the bus against whom allegations of negligence are made is not made a party. It is true that when there is joint tortfeasors impleadment of one of the tortfeasors may be enough (See: *Simon Pathrose v. United India Insurance Co. Ltd.* 1994 (1) KLT 275. But, when negligence is alleged on the part of the driver, in the absence of any proof, it cannot be presumed that the accident occurred due to the negligence of the driver of the bus as held by the Supreme Court in *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, . The maxim "*res ipsa loquitur*" also will come into play to the help of the claimant, only when the circumstances suggest negligence on the part of the driver of the bus. The maxim "*res ipsa loquitur*" (the things speaks for itself) is not a rule of law. It is merely a rule of evidence. It does not alter the general rule that the onus to prove negligence rests upon the claimant. Claimants may not be able to prove the exact cause of accident always. If the accident is proved and by nature of it, if it is more consistent with being caused by the negligence of the driver, the doctrine of "*res ipsa loquitur*" applies and presumption of negligence can be inferred as the accident speaks for itself and burden shifts to the driver to show that he was not negligent at the time of the accident. (See: *Rajasthan State Road Transport Corporation, Jaipur Vs. Narain Shanker and Others*, . If accident is admitted and driver is not able to explain the accident, the principle of "*res ipsa loquitur*" can be applied as held by the Apex Court in *Basthi Kasim Saheb v. The Mysore State Road Transport Corporation and Ors.* : AIR 1991 SC 487). In this case, since the driver of the bus is not made a party, he is prevented from

proving the circumstances by which the accident occurred. No criminal case was filed against the driver of the bus No. N-47 due to the alleged accident. Neither the F.I.R. nor any other document was produced to show that the accident occurred due to the negligence of the driver of bus No. N-47 on 5.12.1978 or regarding any accident occurred on that date. No independent evidence was adduced to show that the accident occurred due to the negligence of the driver of bus No. N-47 except the interested testimony of the claimant himself. According to the claimant, the accident occurred at 4.15 p.m. when he reached in front of the Bishop Vayalil Medical Centre while he was walking with his friends from the school and then Bus No. N-47 ran over his left leg. The accident occurred due to the negligent driving of the bus as it was competing with another private bus. Alleged place of accident is a busy place. None of the eye witnesses were examined. Even the friends who were alleged to have been walking with him at that time were not examined. According to the respondent Corporation, since the claim petition was filed after 14 years of the alleged accident, it is having no records. Even the trip sheets are not available to find out the driver. Respondent K.S.R.T.C. is running large number of buses throughout the State. It is unnecessary to keep the records for such a long time and, therefore, it is unable to verify who was the driver of the bus also. This is true that if there was some evidence supported by F.I.R. or any other documents, burden would have been shifted. None of the friends who were with him were not examined. Even his parents were not examined. But, at the same time, K.S.R.T.C. cannot say now that no accident occurred in view of these pleadings. Paragraph 5 of the written statement filed by the K.S.R.T.C. is as follows:

"The version given by the petitioner about the accident is not correct. On 5.12.1978 when the K.S.R.T.C. bus reached the place of occurrence it was about to stop and the petitioner who was standing on the side of the road suddenly jumped across the road negligently without obeying the traffic rules and thus the bus happened to hit on the petitioner. The accident was solely due to the rash and negligent act of the petitioner and this respondent in any way is not responsible for the same".

Therefore, K.S.R.T.C. cannot contend that no accident occurred involving its bus and the claimant. Then, the questions are how the accident occurred, whether there is any negligence on the part of the driver of the bus, whether negligence can be inferred on the principle of *res ipsa loquitur*, whether amputation of his leg is due to the injuries suffered on the alleged accident etc. It requires further proof. According to the claimant, he was taken to the Medical College Hospital on the same day and his left leg below knee was amputated and he was discharged on 23.12.1978. Neither the wound certificate nor the discharge certificate was produced. There is no evidence to show that he was admitted in the Medical College Hospital on 5.12.1978 or he was treated there. Ext. A2 medical certificate is dated 22.12.1994 obtained on the eve of filing of the claim petition. Exts.A4 and A5 certificates are dated 19.4.1995 and 12.3.1997. What are the certificates seen by the doctors at the time of issuance of the above certificates

are not known. Those doctors were not examined. No certificate from the hospital which treated the claimant at the time of alleged incident was produced to show that amputation of his leg was due to the accident on 5.12.1978. I.A. No. 2232 of 2004 with an affidavit dated 21.7.2004 was filed before this Court producing a photostat copy of the certificate allegedly issued by the Tutor in Orthopaedics of Medical College Hospital. Original of the Certificate dated 28.7.1978 was produced. But, that is seen written in a scrap of paper. It is marked as Ext.A6 subject to proof. It has got over writings and there is no seal in it and whether a tutor in the Orthopaedics Department can issue such a certificate is also not known. It is not issued in the letter pad and it requires further proof. Claimant further relied on Ext.A1 letter of the K.S.R.T.C. That only shows that a petition was filed by the father of the claimant to the Transport Corporation and on 23.1.1980 an amount of Rs. 3,000/- was given as an interim measure for injuries sustained to his son subject to further enquiries. Ext. A1 letter is silent about the nature of injuries or cause of accident. It is dated 23.1.1980. Thereafter, father of the injured also did not pursue the matter. Even if an injury occurred on account of the accident, what was the injury occurred at that time is not clear. According to the counsel for the respondent when a petition was received, being a public sector undertaking, a small amount was sent in a cyclostyled paper subject to verification as is done in usual cases. It is true that in Motor Accident Claims, being a beneficial piece of legislation, a very liberal approach should be taken. But, at the same time, Court also should be convinced that the alleged injury is due to the accident alleged to have been occurred due to the negligence of the driver. But, evidence is lacking.

5. In the appeal filed by the claimant, quantum of compensation is disputed. It is true that if the accident occurred and one leg was amputated, fixation of artificial leg at the younger age will create great difficulties. It will have to be replaced also periodically. There is no dispute at present that the claimant's leg is amputated and artificial leg is also necessary. The Court has to take into account future medical expenses also while awarding compensation in the case of amputation caused in the accident. Claimant has not produced the bills regarding medical expenses incurred so far. In this case, decision of the Supreme Court in *Nagappa v. Gurudayal Singh and Ors.* AIR 2002 SCW 5348) explains how compensation should be awarded in such cases.

In these circumstances, we are allowing both the appeals filed by the K.S.R.T.C. as well as the claimant and set aside the award and remand the matter. Both sides are allowed to adduce further evidence before the Court.

O.P. No. 20781 of 1998 filed by the K.S.R.T.C. is not maintainable as no Writ Petition will lie against the award.

In the above circumstances, O.P. No. 20781 of 1998 is dismissed and M.F.A. Nos. 421 and 1466 of 1998 are allowed by way of remand.