
(1994) 11 KL CK 0018

In the High Court Of Kerala

Case No : M.F.A. No's. 784, 908 and 903 of 1986 and 185 of 1987

Haneef

APPELLANT

Vs

C.T. Paul and Others

RESPONDENT

Date of Decision : 11-11-1994

Acts Referred:

Citation : (1996) ACJ 325

Hon'ble Judges : V.V. Kamat, J;K. Sreedharan, J

Bench : Division Bench

Advocate : P.S. Santhosh, for the Appellant; S. Parameswaran and Mathews Jacob, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—Though these appeals arise from decisions in different petitions disposed of by Motor Accidents Claims Tribunal, Ernakulam, we are disposing them of by common judgment because all the claims arise out of the same motor accident. The question that arises for consideration in these appeals is one and the same, namely, who exactly was negligent in causing this accident.

2. M.F.A. No. 784 of 1986 is at the instance of the petitioners in O.P. (M.V.) No. 691 of 1982. They are wife, daughter and mother of late John who lost his life in the accident. M.F.A. No. 903 of 1986 is by the petitioner in O.P. (M.V.) No. 685 of 1982, namely, the mother of deceased Lalu, who lost his life in the accident. M.F.A. No. 908 of 1986 is by the petitioners in O.P. (M.V.) No. 686 of 1982. They are the wife and children of deceased George who succumbed to the injuries in the accident. M.F.A. No. 185 of 1987 is at the instance of the petitioner in O.P. (M.V.) No. 107 of 1983, petitioner Haneef sustained injuries in the incident.

3. The three deceased and the injured were travelling in a jeep bearing registration No. KEE 3067. That vehicle was proceeding to Parur from Alwaye. At about 12.25 during the night between 25.7.1981 and 26.7.1981 when it reached Thattampady, bus bearing registration No. KEE 3301 which was coming from the

opposite direction collided against the jeep. As a result of the collision, the side of the jeep was completely smashed. Persons who were seated on the right side of the jeep were involved in the accident and they breathed their last instantaneously. After the collision, the bus KEE 3301 proceeded further in the north-easterly direction for about 44.08 metres then plunged into a paddy field. According to claimants before the Tribunal, the accident was the outcome of the rash and negligent driving of the bus KEE 3301. This contention of the claimants was disputed by the owner and driver of the bus. Learned Tribunal came to the conclusion that the collision was a result of contributory negligence by the drivers of both the vehicles. In this view of the matter, after finding the compensation payable to claimants in each of the petitions, the Tribunal directed 50 per cent of it to be paid and the 50 per cent to be suffered by them since the owner of jeep KEE 3067 and its insurer were not impleaded in the proceedings. The correctness of this finding is the main issue to be dealt with in these appeals.

4. Immediately after the incident, police prepared a mahazar. Mahazar was marked in this case in O.P. (M.V.) No. 691 of 1982 as Exh. A-3. The Sub-Inspector of police, P.W. 2, who prepared that mahazar proved the same. According to mahazar and the evidence of P.W. 2 the incident took place at a point 65 cm. to the south of middle line of the tarred portion of the road. The southern half of the road was the track for the vehicle proceeding from east to west. So the jeep KEE 3067 was proceeding along its track. After the collision, as seen from the evidence of P.W. 2 and the mahazar, the jeep KEE 3067 did not proceed forward to any noticeable distance. Therefore, it is evident that the jeep was not being driven at a high speed. If it was at a high speed, it could not have come to a halt immediately after the collision. The fact that the jeep could come to a halt immediately after the collision goes a long way to show that the jeep was being driven along its track at a controllable speed. The bus KEE 3301 which was proceeding from west to east should have kept to the northern half of the road. It should not have crossed the middle line and entered the southern track. Collision of the vehicle having taken place on the southern side of the road shows that bus was proceeding along the wrong side of that vehicle. After hitting the jeep it proceeded forward for about 44.08 metres in north-easterly direction and then fell into the paddy field. The forward movement of the vehicle for more than 44 metres establishes the rashness with which it was being driven at the time of the incident. From this we have no hesitation in holding that the collision was the result of the rash and negligent driving of stage carriage bearing registration No. KEE 3301. In this view of the matter, we are not in a position to support the reasoning of the learned Tribunal that the collision happened as a result of an error of judgment on the part of the drivers of the vehicles. We are clear in our mind that an incident which happened as a result of error of judgment can never be treated as one arising out of negligence. Even though the Tribunal observed that the collision could have been the result of an error of judgment, claimants were awarded compensation on account of the loss of life of passengers. If actually the incident happened as a result of the error of judgment on the part of

drivers, the Tribunal could not have legally saddled the owner of the bus and the insurance company with the liability to pay 50 per cent of the compensation to the claimants. We reverse the finding arrived at by the Tribunal on the question of negligence and come to the conclusion that the incident was the result of the rash and negligent driving of stage carriage bearing registration No. KEE 3301 by its driver.

5. In O.P. (M.V.) No. 691 of 1982 the claimants, namely, the wife, child and mother of deceased John claimed compensation of Rs. 2,02,750/-. Their case was that deceased John aged 28 was getting an income of Rs. 750/- per month from the tea-shop he was running. Tribunal took the view that deceased might have been spending a sum of Rs. 300/- per month on the members of his family. We feel that this assessment made by the Tribunal is correct. At that rate the annual dependency of the family can be fixed at Rs. 3,600/-. While computing the compensation the Tribunal adopted 20 as the multiplier. In view of the decision of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the multiplier can never be 20. On the facts and circumstances of this case, we feel that a multiplier of 15 will be reasonable. Thus, the compensation on account of the death of John has to be fixed at Rs. 54,000/-.

6. Learned Tribunal awarded a sum of Rs. 1,500/- towards the funeral expenses and transportation charges. We do not find any ground to interfere with the same. Towards loss of consortium the Tribunal fixed a sum of Rs. 6,000/-. According to the Supreme Court as per the above decision, amount for loss of consortium is to be in the conventional sum of Rs. 15,000. We feel that that amount has to be awarded to the claimants. It is also worthwhile to note that the Tribunal did not award any amount on the count of pain and suffering. On this count claimants must get a further sum of Rs. 15,000/-.

Thus, the claimants in O.P. (M.V.) No. 691 of 1982 (appellants in M.F.A. No. 784 of 1986) should get a sum of Rs. 85,500/- as compensation. This amount will carry interest at the rate of 12 per cent per annum from 4.9.1982 till date of payment. Respondent Nos. 1 and 2 who are the owner and driver of KEE 3301 are jointly and severally liable for the said amount. But the third respondent, New India Assurance Co. Ltd., will pay a sum of Rs. 50,000/- out of the total amount of Rs. 85,500/- together with interest at the rate mentioned above to the appellants in M.F.A. No. 784 of 1986.

7. M.F.A. No. 903 of 1986 is at the instance of the petitioner in O.P. (M.V.) No. 685 of 1982. She is the mother of deceased Lalu who died in the accident. Lalu was aged 28 years on the date of the incident. He was working as a junior electrician in Kerala Agro Machinery Corporation Ltd., Athani. He was having a monthly income of Rs. 728.80 Tribunal took the view that mother's dependency is at Rs. 250/-. The mother was aged 52 years. After capitalising the monthly dependency by 20 years the amount was worked out to Rs. 60,000/-. From that one-third was deducted since lump sum payment was ordered. By adopting this

method the Tribunal fixed compensation at Rs. 40,000/-. The compensation for loss of service to the petitioner was also found to be reasonable and a sum of Rs. 10,000/- was paid. A further sum of Rs. 1,000/- was awarded to meet the funeral expenses. Tribunal also granted Rs. 100/- for transporting the dead body from the place of accident. Thus, the Tribunal fixed a total compensation of Rs. 51,100/-. We do not find any reason to interfere with the said quantum. We confirm the same. Respondent Nos. 1 and 2, the owner and driver of the vehicle KEE 3301, are jointly and severally liable to pay the said amount of Rs. 51,100/- together with interest at the rate of 12 per cent per annum from 4.9.1982 till date of payment. Out of this, a sum of Rs. 50,000/- together with interest at the above rate from 4.9.1982 will be paid by the insurance company, namely, New India Assurance Co. Ltd.

8. M.F.A. No. 908 of 1986 is at the instance of petitioners in O.P. (M.V.) No. 686 of 1982. They are the wife and children of deceased George. George was aged 40 years at the time of the accident. He was a civil contractor. His monthly income was fixed by the Tribunal at Rs. 750/-. We feel that this assessment of the monthly income made by the Tribunal is reasonable. On this basis the Tribunal fixed the total amount of compensation at Rs. 90,000/-. We do not find any reason to interfere with the same. Rs. 150/- was awarded towards transportation charges and a sum of Rs. 1,500/- for the funeral expenses. They also do not call for any interference. For the loss of consortium wife was awarded Rs. 7,500/-. The mother was also paid Rs. 5,000/- and to the children another sum of Rs. 5,000/-. Thus, the total compensation awarded by the Tribunal comes to Rs. 1,09,150/-.

9. According to counsel representing the claimants the Tribunal did not award any compensation on account of pain and suffering. Even though the death of George was instantaneous, claimants are entitled to compensation on account of pain and suffering. We fix a sum of Rs. 15,000/- on this count. Consequently, the total amount payable to the claimants in O.P. (M.V.) No. 686 of 1982 comes to Rs. 1,24,150/-. This amount will carry interest at the rate of 12 per cent per annum from 4.9.1982 till date of payment. Out of this amount, a sum of Rs. 50,000/- together with interest at the above-mentioned rate will be paid by New India Assurance Co. Ltd., respondent No. 3.

10. M.F.A. No. 185 of 1987 is at the instance of the petitioner in O.P. (M.V.) No. 107 of 1983. He was aged 32 at the time of the accident. He was working as a welder in the Cochin Port Trust. He sustained injuries on his left eye. The injuries as noted in Exh. A-6, wound certificate, are:

- (1) A transverse lacerated wound 5 cm. x 1/2 cm. over the left cheek.
- (2) A lacerated wound 2 cm. x 1 cm. over the medial side of left eyebrow.
- (3) A lacerated wound 1/2 cm. diameter over the left side of the forehead.
- (4) A lacerated wound over the right elbow 1 cm. x 1/2 cm.

It is also noted therein that the injury on the medial side of the left eyebrow has adversely affected the left orbital wall of the eye. The doctor who examined the injured as per Exh. A-6, wound certificate, assessed the permanent disability at 25 per cent. Taking into consideration these injuries and the permanent disability the Claims Tribunal fixed compensation of Rs. 28,100/-. We do not find any ground to interfere with the said quantum of compensation. That amount of Rs. 28,100 will carry interest at the rate of 12 per cent per annum from 26.2.1988 till date of payment. Respondent Nos. 1 and 2, who are the owner and driver of the bus KEE 3301, are jointly and severally liable to pay the amount. Since the vehicle was covered by a valid insurance policy, the respondent No. 3, New India Assurance Co. Ltd., will pay this amount of Rs. 28,100/- together with interest to the claimant-appellant. 11. All the appeals are disposed of as indicated above.