

(1989) 03 KL CK 0071
In the High Court Of Kerala

Lekshmi Pilla Amma

APPELLANT

Vs

G. Geetamma and Others

RESPONDENT

Date of Decision : 22-03-1989

Acts Referred:

Citation : (1996) 1 ACC 441

Hon'ble Judges : P.C. Balakrishna Menon, J;P. Krishnamoorthy, J

Bench : Division Bench

Judgement

P.C. Balakrishna Menon, J.—This appeal by the first respondent is against the decision of the Motor Accidents Claims Tribunal, Trivandrum directing respondents 1 and 2 to pay Rs. 40,000/- to the petitioners. The liability of the third respondent insurer is restricted to the statutory limit of Rs. 5,000/-. There is no dispute that one Rajan Pillai the husband of the first petitioner and father of the third petitioner died in a motor accident on 6.1.1977 while travelling in a bus KLQ 4544. The bus belonged to the first respondent and was driven by the second respondent. The accident was due to a tyre burst. Rajan Pillai was thrown out and the bus itself fell on him. He died instantaneously.

2. The second petitioner is the mother of Rajan Pillar. She got herself impleaded as one of the legal representatives of the deceased.

3. The Court below has found that the second petitioner the mother was not a dependent of Rajan Pillai. He was a bus conductor getting a salary of Rs. 300/- per month and his contribution towards expenses of the family was at the rate of Rs. 200/- per month. Compensation for loss of dependency of his wife and child is estimated at Rs. 40,000/- and the said amount is awarded as compensation in favour of petitioners 1 and 3.

4. The only question urged by the learned Counsel Mr. Rajasekharan Nair is that the Court below is wrong in applying the principle of res ipsa loquitur as the accident was due to a tyre burst. The tyre burst, according to the learned Counsel for the reason of a latent defect and in such circumstances, no

presumption of negligence can be drawn applying the principle of *res ipsa loquitur*. Ext. A-4 is the copy of the inspection report relating to the Motor Vehicle submitted by the Motor Vehicles Inspector shortly after the accident. The Inspector of Motor Vehicles is examined as RW-2. Ext. A4 shows that the condition of the front left tyre was not satisfactory, and that the tyre had burst causing the accident resulting in the death of Rajan Pillai. The unsatisfactory condition of the tyre is not a latent defect. It is the duty of the owner of the vehicle to keep the tyres of the vehicle in good condition and make it road-worthy.

5. We see not merit in the appeal. It is accordingly dismissed. The parties will suffer their respective costs.

6. We have allowed the C.M.P. 25579 of 1988 filed by the second petitioner to be impleaded as an additional respondent in the appeal. No relief can, however, be granted in favour of the second petitioner for the reason that her claim had been considered and decided by the Tribunal against her. She has not chosen to file an appeal against the decision of the Tribunal and that decision has become final.