

(2009) 07 KL CK 0128
In the High Court Of Kerala
Case No : M.A.C.A. No. 705 of 2006

Manager, National Insurance Co. Ltd.

APPELLANT

Vs

Zuhra and Others

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Motor Vehicles Act, 1939 — Section 110F
Motor Vehicles Act, 1988 — Section 163A, 175

Citation : (2011) ACJ 1790

Hon'ble Judges : M.L. Joseph Francis, J;K.M. Joseph, J

Bench : Division Bench

Advocate : Rajan P. Kaliyath, for the Appellant; Jawahar Jose, M. Ramesh Chander and Mr. P. Narayanan, for the Respondent

Final Decision : Allowed

Judgement

M.L. Joseph Francis, J.—This appeal is filed by the respondent No. 3 in O.P. (MV) No. 691 of 2002 on the file of M.A.C.T., Kasargod. Respondent Nos. 1 to 4 herein are the petitioner Nos. 1 to 4. Respondent Nos. 5 and 6 herein are the respondent Nos. 1 and 2 in that O.P., which was filed u/s 163-A of the Motor Vehicles Act. Respondent Nos. 7 and 8 herein are the supplementary respondent Nos. 4 and 5 in that O.P.

2. The allegation is that on 23.3.2001 while deceased Shihab and others were travelling in an autorickshaw bearing No. KL 14-A 3698 from Kunhikanam to Ichilangod driven by respondent No. 1 and when the said autorickshaw reached near Chandragiri Guest House, Mogral Puthur at about 3.15 p.m., a motor cycle bearing No. KL 13-A 3703 came at a high speed and after overtaking a lorry hit against the autorickshaw, as a result of which the autorickshaw overturned and thereby Shihab and others sustained serious injuries. Subsequently, Shihab died due to the injuries sustained in the accident. The accident was due to negligence of both the drivers of the vehicles. Respondent No. 1 was the driver, respondent No. 2 was the owner and respondent No. 3 was the insurer of the autorickshaw.

Petitioner No. 1 is the mother and petitioner Nos. 2 to 4 are the brothers and sisters of Shihab. The respondent No. 1 is the father of Shihab. The petitioners claim Rs. 2,00,000 as compensation. The respondent No. 3 filed a written statement admitting the policy of the autorickshaw and contends that the accident was due to negligence of the motorcyclist. In view of the contentions of respondent No. 3 supplementary respondent Nos. 4 and 5 were impleaded as they are the rider and owner of the motor cycle. Respondent No. 4 filed written statement contending that accident was due to negligence of respondent No. 1 and that the compensation claimed is excessive.

3. In the Claims Tribunal, PW 1 was examined and Exhs. A1 to A3 and B1 and B2 were marked. The Claims Tribunal on considering the evidence found that the accident was due to rash and negligent driving of both drivers of the vehicles and awarded an amount of Rs. 1,54,500 as compensation together with interest at the rate of 9 per cent per annum from the date of petition till the date of realization from all the respondents jointly and severally and respondent No. 3 was directed to pay the entire compensation with liberty to recover half of the award amount from respondent Nos. 4 and 5. Against that award, the respondent No. 3 filed this appeal.

4. Heard the learned counsel for the appellant and the learned counsel for the respondents.

5. Learned counsel for the appellant submitted that the award is opposed to law and evidence to the extent it makes the appellant liable to pay 50 per cent of the compensation and the direction to deposit the full amount is illegal and unsustainable. Learned counsel for appellant submitted that charge-sheet, Exh. B1, is not against both drivers but only against respondent No. 4 who was driving the motor cycle. Learned counsel for the appellant further submitted that scene mahazar, Exh. B2, categorically indicates that the motor cycle was on the wrong side of the road.

6. It is well settled law that while considering the claim petition, the Tribunal is required to hold an inquiry and it is not to act as a criminal court, so as to find whether the petitioner has established the occurrence beyond any shadow of doubt. In the inquiry, if there is prima facie evidence of occurrence, there is no reason to disbelieve such evidence. Exh. A1 is the copy of F.I.R. in the criminal case registered against the rider of the motor cycle which was registered on the basis of the statement given by respondent No. 1. Exh. B2 is the copy of scene mahazar prepared on 24.3.2001. On going through Exh. B2, it cannot be said that the accident occurred solely due to the negligence of rider of the motor cycle. In a petition u/s 163-A of the Motor Vehicles Act the petitioners need not plead or establish that the death in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or any other person. PW 1 claims to be an eyewitness to the accident. PW 1 deposes that while he was driving his autorickshaw through the public road the autorickshaw driven by respondent No. 1 came from behind and

overtook his autorickshaw and hit against the motor cycle. PW 1 further deposes that the accident was due to negligence of respondent No. 1 who was driving the autorickshaw. Respondent No. 1 did not go into the witness-box to prove that he was not negligent. Therefore, an adverse inference can be drawn against him. Considering the facts and circumstances of this case we are of the view that learned Claims Tribunal is justified in finding that the accident occurred due to negligence of both the drivers of the vehicles involved in the accident.

7. The Claims Tribunal assessed the compensation on the basis of structured formula as provided u/s 163-A of the Motor Vehicles Act, 1988. Since the deceased was not an earning member, Rs. 15,000 was taken as his yearly income and after deducting 1/3rd towards personal expenses Rs. 10,000 was fixed towards dependency. As deceased was aged 12 years, 15 was taken as suitable multiplier and Rs. 1,50,000 was awarded as compensation towards loss of dependency. Rs. 2,000 was awarded for funeral expenses and Rs. 2,500 for loss to estate. As the Claims Tribunal assessed the compensation in accordance with section 163-A of the Motor Vehicles Act, 1988, we are of the view that the compensation assessed by the Claims Tribunal is just and reasonable.

8. In the decision in National Insurance Co. Ltd. Vs. Sivasankara Pillay and Others, it is held that:

The direction or observation permitting the appellant insurance company to realize 25 per cent from any other person or his insurer through civil suit is of no avail in view of section 110-F of the Motor Vehicles Act, 1939 (which corresponds to section 175 of the Motor Vehicles Act, 1988). Jurisdiction of the civil court stands barred with the constitution of a Claims Tribunal for the area concerned "to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area".

9. In view of the principles laid down in the above ruling, we are of the view that Claims Tribunal is not justified in directing the appellant to deposit the entire amount of compensation and allowing the appellant to recover 50 per cent from supplemental respondent Nos. 4 and 5 in the original petition. Therefore, that direction is liable to be set aside.

10. Accordingly, this appeal is allowed in part. The compensation awarded in O.P. No. 691 of 2002 on the file of M.A.C.T., Kasargod is confirmed. The direction to deposit the entire compensation by the appellant insurance company is set aside and the respondent No. 3 in the original petition is directed to pay only 50 per cent of the compensation awarded in that OP. There is no order as to costs.