

(2003) 01 KL CK 0040
In the High Court Of Kerala
Case No : M.F.A. No. 941 of 1995

Mary	Vs	APPELLANT
Mathew		RESPONDENT

Date of Decision : 06-01-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2004) 3 ACC 134 : (2003) ACJ 1344 : (2003) 1 ILR (Ker) 595 :
(2003) 2 RCR(Civil) 316

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Thankappan, J

Bench : Division Bench

Advocate : Anil Joseph, for the Appellant; Rajan Joseph and V.P.K. Panicker, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—One Abraham died, alleged to be in a motor accident while fitting a glass to a stationary bus. For that purpose, he was climbing on the wall very close to the place where the bus was stationed. One of his feet was on the wall and the other on the backside of the bus. There was movement to the bus and he fell down and succumbed to the injuries. The appellants/claimants approached the tribunal.

2. Respondents 1 and 2, the owner and driver of the vehicle denied the employment of the deceased for fitting the glass. According to them, no such accident had taken place. He was only climbing a wall near the place where the bus was stationed and the bus was stationary. He fell down from the wall and that is styled as a motor accident to get compensation.

3. The tribunal considered the facts and evidence on record and found that there was no motor accident arising out of the use of the vehicle to claim compensation. Hence the tribunal dismissed the claim petition.

4. The judgment dismissing the claim petition is assailed in this appeal. It is

contended relying on the decision in *Sharlet Augustine v. Raveendran* (1992 (1) KLT 795), *Babu v. Ramesan* (1995 (2) KLT 300), *New India Assurance Co. Ltd. v. Lakshmi* (2000 (3) KLT 80) and also *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, that a vehicle need not always be moving, to say that the accident had occurred out of the use of the motor vehicle. Even in the case of a stationary vehicle, there can be a motor accident and the injured or the dependents of the deceased, as the case may be, can very well raise claims u/s 166 of the Motor Vehicles Act. It is further contended that the deceased was fitting a glass on a vehicle stationed in a bus stand at the time of accident. Therefore, the accident was arising out of the use of the vehicle. It is in this background the aforesaid decisions have been cited.

5. The decision of the Supreme Court is in respect of a vehicle in which petrol was being carried. Use of that vehicle was to carry petrol and the accident had happened while that vehicle was used for that purpose. It is with respect to the accident that had happened while such a vehicle was stationary to take petrol, the Supreme Court held that it had arisen out of the use of the motor vehicle. Necessarily, that dictum cannot be applied to the facts of this case. In the decision reported in *Sharlet Augustine's* case (1992 (1) KLT 795) the case was dashing of a bus against a wayside electric post and falling into a paddy field. One attending to save the bus driver and got electrocuted. The facts in that case, compared to the one on hand, do not enable the appellants to contend that the accident in the case on hand had occurred out of the use of the motor vehicle. Equally so, is the dictum laid down in *Babu's* case (1995 (2) KLT 300) where the accident had occurred while the cargo was being loaded into a goods vehicle. Of course the rope used for tying the cargo had come in contact with the electric line and caused the accident. It was a truck and the use of the truck was to load the cargo and transport it. Necessarily that accident had also arisen out of the use of the motor vehicle. So the dictum of that case cannot fit into the fact frame of this case. Even in that case, the Division Bench had made it clear that:

"The test should be whether the accident was used reasonably proximate to the use of a motor vehicle....."

Therefore, any accident in respect of a stationary vehicle shall be proximate to the use of the motor vehicle.

6. It is in this background, we have to consider the dictum laid down in *New India Assurance Co. Ltd.'s* case (2000 (3) KLT 80) wherein a Division Bench of this Court has held that:

"The word 'use' is used in the Section in a wide sense. It covers all employment of the motor vehicles, so that whenever the vehicle is put into action or service, there is 'user' of the vehicle, within the provisions of Section 165 of the vehicle, whether the vehicle was being driven, or repaired or simply parked or kept stationary or left unattended. In that sense, the vehicle is used, whenever the vehicle is driven out for some purpose or it is kept stationary."

Therefore, the vehicle has to be driven out for some purpose and can be stationary. In other words, held in Babu's case, it should have some proximity to the use of the motor vehicle. In this case, it is not so proved.

7. Moreover, there is no proof of employment of the deceased even for repair of the vehicle as contended by the claimants. They contended that the deceased attempted to fit a glass on the vehicle which was parked in a bus stand. Repair of the vehicle shall always be conducted in a workshop or garage. It cannot be taken that the repair was being conducted in a bus stand. There is also no proof, in the absence of the categoric denial of the driver as also owner that the deceased had never been employed for that purpose, therefore, the finding of the tribunal that the claimants have failed to prove that the deceased Abraham died in a motor vehicle accident and that it was because of the rashness or negligence on the part of the first respondent that he died is perfectly justified and cannot be interfered with in an appeal u/s 173 of the Motor Vehicles Act.

Appeals fails and is dismissed.