

(2015) 05 KL CK 0093

In the High Court Of Kerala

Case No : M.A.C.A. Nos. 1235, 1260 and 1646 of 2010

Moidunnykutty and Others

APPELLANT

Vs

K.K. Krishnan Nair and Others

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Citation : (2015) 05 KL CK 0093

Hon'ble Judges : T.R. Ramachandran Nair, J;K.P. Jyothindranath, J

Bench : Division Bench

Advocate : T.C. Suresh Menon, for the Appellant; E.M. Joseph, Advocates for the Respondent

Final Decision : Disposed off

Judgement

T.R. Ramachandran Nair, J—All these appeals arise from the same accident. M.A.C.A. No. 1235 of 2010 and M.A.C.A. No. 1646 of 2010 are respectively filed by the claimants and the Insurance Company, aggrieved by the award in O.P. (M.V.) No. 79/2004. M.A.C.A. No. 1260/2010 is filed by the claimant in O.P.(M.V.) No. 80/2004.

2. The accident occurred as a motor cycle collided with a bus and the rider of the motor vehicle and the pillion rider succumbed to the injuries on the same day. The accident occurred on 22.12.2003 at about 7.15 a.m. The rider of the motor vehicle was one Sri. Mohammed Shemir and the pillion rider was Sri. Shanavas. They were travelling in a motor cycle having registration No. KL-01-/K 8120 through Perumpilavu Kunnamkulam Public road. The bus bearing registration No. KL 01-/D 5774 hit the motor cycle, going by the allegations in the applications for claiming compensation. Even though, they were taken to the Ansar Hospital, Perumpilavu, Mohammed Shemir died on the way whereas Shanavas succumbed to the injuries during the course of treatment.

3. The learned tribunal considered the documentary evidence adduced by the parties i.e. the claimants and awarded compensation. Ext. A1 to 13 have been

marked.

4. On the side of the Insurance Company Ext. B1 was marked, which is the copy of the scene mahazar.

5. At the outset, the learned counsel for the claimants Sri. T.C. Suresh Menon submitted that the findings entered by the tribunal that the deceased, rider of the motor cycle is answerable for contributory negligence is not correct. The learned counsel, by relying on the principles stated by the Apex Court in Jiju Kuruvila and Others Vs. Kunjamma Mohan and Others, (2013) 3 ACC 49 : (2013) ACJ 2141 : (2013) 7 AD 484 : AIR 2013 SC 2293 : (2013) 4 CTC 252 : (2013) 13 JT 417 : (2013) 3 RCR(Civil) 817 : (2013) 8 SCALE 722 : (2013) 9 SCC 166 : (2013) AIRSCW 3881 : (2013) 4 Supreme 709 submitted that merely by recording the entries in the scene mahazar, the aspect concerning negligence could not have been assessed by the tribunal. It is therefore submitted that the negligence attributed to the extent of 50% on the rider of the motor cycle cannot be sustained.

6. The relevant findings of the Apex Court in the above quoted judgment are in paragraphs 23 and 24, which are extracted below.

"There is no evidence on record to suggest any negligence on the part of the deceased. "Scene mahazar", Ext. B2, also does not suggest any rash and negligent driving on the part of the deceased.

The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles, and their directions, etc. depends on a number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident occurred, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the court cannot give any specific finding about negligence on the part of any individual".

7. Going by the same the mere position of the vehicles after the accident as shown in a scene mahazar cannot give any substantial proof as to the rash and negligent driving on the part of one or the other. Here the evidence is to the effect that the motor cycle was going from south to north and the bus was coming from north to south. The road at that place was having a width of 7.24 meters with a margin of 2.33 meters on the western side and 1.5 meters on the eastern side. The accident spot is at a distance of 2.68 meters westwards from the eastern tarred end of the road. The learned tribunal therefore observed that the correct side of the motor cycle was the western side and the possible conclusion that can be drawn is that the motor cycle was being driven through the wrong side.

8. We have gone through the scene mahazar also. It is explained by the learned counsel for the insurance company that width of the road, the spot of the accident and a tyre marks are also recorded in the scene mahazar. Going by the tyre mark it is seen that tyre marks are 3.04 metres towards the north from the spot of accident and 15.75 metres towards the southern side. It is not clear whether the tyre marks are of the motor cycle or the bus. This is the position available from the scene mahazar.

9. The argument made by the learned counsel for the insurance company is that no conclusion can be drawn from the scene mahazar that the bus was coming through the wrong side whereas it will indicate that the motor cycle had gone to the right side from the middle portion of the road.

10. The learned tribunal on the basis of the scene mahazar has attributed the negligence equally at 50%. In this context the learned counsel for the claimants relied upon the police charge Ext. A2 wherein the driver of the bus is the accused. According to the learned counsel, no further evidence is therefore required to prove the negligence on the part of the driver of the bus. Herein, there is no written statement by the driver as the driver was remaining ex parte.

11. After going through the details in the scene mahazar and the evidence, we are also of the view that the details recorded in the scene mahazar may prima facie indicate that the motor cycle had gone to the right side. Whether it is for any other reason, there is no clear evidence. Therefore even though the learned counsel for the claimants vehemently argued that the contributory negligence alleged against the driver of the motor cycle cannot be accepted, we are of the view that instead of 50%, it will be safe to adopt the ratio as 75% : 25%, i.e. 25% on the part of the rider of the motor cycle and 75% on the part of the driver of the bus. Therefore we modify the award accordingly.

12. As regards quantum of compensation in O.P.(M.V.) No. 79/2004 which is appealed in M.A.C.A.1235/2010 filed by the claimants, it is seen that the deceased was only aged 21 years. Ext. A7 is the certificate issued from Sruthi Electricals, Marancherry certifying that Shanavas, the deceased was working as Apprentice Wireman Cum Plumber. His monthly income was Rs. 3,500/- and the tribunal adopted it at Rs. 2,500/-. The Tribunal, after considering the age of the claimants adopted the multiplier as 11 whereas going by the judgment in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487, the age of the deceased will have to be reckoned. Therefore the correct multiplier will be 18. Being a bachelor 50% has to be deducted towards personal expenses also. Instead of Rs. 2,500/- we will adopt Rs. 3,000/- as monthly income for the purpose of awarding the compensation. We also find that towards loss of love and affection only Rs. 10,000/- is granted, for pain and suffering only Rs. 5,000/- has been granted and for transportation and funeral expenses only Rs. 5,000/- has been granted

and towards loss of estate also Rs. 10,000/- is granted by the Tribunal, which require enhancement. We therefore refix the compensation on the following manner:

13. The learned counsel appearing for the Insurance Company, submitted that only to the extent of 75%, the company can be held liable to pay. In this case the deceased is a pillion rider. Therefore it is open to the claimants to claim from any of the tortfeasors. On that principle, we direct the Insurance Company i.e. the appellant in M.A.C.A. 1646/2010 to pay the amount to the claimants along with interest @9% per annum for the enhanced compensation. It will be open to the insurance company to avail their remedies against the owner, driver and insurer of other vehicle.

14. As far as M.A.C.A. 1260/2010 is concerned, the deceased was aged 19 at the time of the accident.

15. The tribunal found that he was a Computer student at the relevant time. Therein also, tribunal has taken the multiplier by considering the average age of the claimants which is not the correct method. The multiplier going by the Sarla Varma's case (supra) is 18.

16. Going by the evidence he was having Diploma in Computer Application. We take Rs. 2,500/- as monthly income notionally and by adopting the multiplier as 18 and after deducting 50% for the personal expenses the amount will be Rs. 2,70,000/-. For loss of love and affection instead of Rs. 10,000/- granted by the tribunal, we grant an amount of Rs. 1,00,000/-. For pain and suffering, we grant Rs. 10,000/- instead of Rs. 5,000/- granted. For transportation expenses, we grant Rs. 2,000/- and for funeral expenses we grant Rs. 25,000/- and for loss of estate the amount will be Rs. 30,000/-. In M.A.C.A. No. 1260/2010, we refix the compensation in the following manner:

17. Accordingly, the total compensation will be Rs. 4,37,000/-. It will carry interest @9% from the date of petition for the enhanced compensation. Out of the total compensation, the insurance company will have to bear 75% and the 25% of the liability will be on the owner. The amount will be deposited within three months.

The appeals are disposed of accordingly. There will be no order as to costs in these appeals.