

(1997) 10 KL CK 0035
In the High Court Of Kerala
Case No : M.F.A. No. 529 of 1990

National Insurance Company Ltd.

APPELLANT

Vs

Yohannan and Others

RESPONDENT

Date of Decision : 24-10-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 2 Rule 2(3)
Motor Vehicles Act, 1939 — Section 110B, 110F

Citation : (1998) 1 ACC 61 : (1998) ACJ 827 : AIR 1998 Ker 37 : (1998) 1 ILR (Ker) 555 : (1998) 1 RCR(Civil) 51

Hon'ble Judges : P.A. Mohammed, J;P. Shanmugam, J

Bench : Division Bench

Advocate : Rajan P. Kallyath, for the Appellant; K. Gopalakrishna Kurup, T.J. Thomas, K.T. Sankaran and V.B. Unni Raj, for the Respondent

Final Decision : Allowed

Judgement

Shanmugam, J.—The 6th respondent National Insurance Co. before the Motor Accidents Claims Tribunal is the appellant here. The Tribunal passed an award in favour of the claimant holding that respondents 1 to 4 and 6 are jointly and severally liable and directing the 6th respondent insurance company to deposit the whole amount of Rs. 50,930/- with interest at the rate of 12% per annum. The appeal is against this award.

2. The facts, briefly, stated, are as follows : The 1st respondent claimant was a passenger in a lorry bearing registration No. KLK 3580 going from Mutholikkadavu to Mylankandathu with a load of timber on 17-2-1984. At about 1 p.m. when the lorry came to the Mevada Junction. another lorry bearing registration No. KLF 603 came from the opposite direction collided with lorry KLK 3580. The 1st respondent and others were injured. He was taken to the Taluk Headquarters Hospital, Palai and then to Medical College Hospital wherein he had undergone prolonged treatment as an inpatient. He had also undergone further treatment at Fathima Mission Hospital, Kozhuvanal for 45 days. Ext.A4 is the

copy of the wound certificate showing 4 c.m. x 4 c.m. wound over the posterior aspect of the upper third right thigh, lacerated wound 4 c.m. x 5 c.m. on the posterior aspect of the right knee, superficial abrasion over the outer aspect of the right knee, multiple lacerated wound on the right foot, lacerated wound 1 x 1 x 1 cms. on the posterior aspect of lower end of right leg and dislocation of right knee. Consequently, his right knee was operated. He had also undergone hospital treatment for 6 months as inpatient. He filed a petition claiming a compensation of Rs. 1 lakh.

3. The Tribunal found that the 1st respondent claimant sustained injuries as alleged. On the issue relevant for our consideration, viz., on whose negligence the accident occurred"? The Tribunal found that the accident was the result of the composite negligence of the drivers of both the lorries and fixed a compensation of Rupees 50,930/-. One of the insurance companies, viz., the New India Assurance Company, the insurer of lorry KLF 3580, was exonerated from the liability by the Tribunal since the lorry was not insured with them. Consequently, the drivers and the owners of the lorries and the National Insurance Company, the insurer of lorry KLF 605, were held jointly liable. However, the Tribunal directed the 6th respondent atone to deposit the amount. Hence the appeal.

4. In the appeal, the insurance company contended that the Tribunal erred in directing the appellant to deposit the entire amount of compensation when the finding is that the accident was the result of the composite negligence. It is submitted that the Tribunal ought to have decided the percentage of negligence and should have apportioned and fixed the compensation payable by the appellant.

5. Learned counsel appearing on behalf of the claimant submitted that the drivers of both the vehicles involved in the accident were joint tort-feasors and, therefore, the claimant can proceed against any one of them since their liability is joint and several. Therefore, there cannot be any apportionment of the compensation. In support of this contention, he referred to a Division Bench decision of this Court in *Velunni v. Vellakutty* (1989) 2 Ker LT 227 wherein the Division Bench held as follows :

"The apportionment of the compensation in the case of legal representatives of Mohandas is clearly contrary to law. The tribunal should have held that it is a case of joint and several liability. We are of opinion that in the interests of justice we should rectify the error committed even without an appeal or cross-objection. We have already indicated that a contention that driver, owner and the insurer of the stage carriage bus are liable for the entire compensation has been taken in MFA 601 of 1983. We, therefore, set aside the direction of the tribunal that the compensation due to the legal representatives of Mohandas is payable in moieties by the owner of the motor cycle on the one hand and by the driver, owner and insurer of the stage carriage bus on the other. There shall be a decree jointly and severally against all these persons."

He also referred to the decision in *Khushro S. Gandhi and Others Vs. N.A. Guzder and Others*, wherein the Supreme Court held that in the case of joint tort-feasors, in order to release all the joint tort-feasors the plaintiff must receive full satisfaction, or which the law must consider as such, from a tort-feasor, before other joint tort-feasors can rely on accord and satisfaction. The rule which is in consonance with equity, justice and good conscience, would recognise that liability of tort-feasors is joint and several.

6. Learned counsel appearing on behalf of the 4th respondent, owner of the lorry KKK 3580 submitted that the accident occurred only due to the rash and negligent driving of the driver of the lorry KLF 605. According to him, even though he had not filed an appeal against the finding of the Tribunal holding composite negligence against him, he is entitled to challenge the same in this appeal. This court, according to him, may invite the Rule 33 of Order 41 CPC to pass any decree and make any order which ought to have been passed as the case may require.

7. We have heard the counsel in extenso. The only and the main question that arise for consideration is that in case of a composite negligence, is it open to the Tribunal exercising power u/s 110-B of the Act to pass an award apportioning the liability?

8. Before deciding the question, the scope of Sections 110 to 110-F of the Motor Vehicles Act (hereinafter referred to as the Act) may be worth considering. Before the introduction of the Claims Tribunal under these provisions, the claimants had to move the civil court under Fatal Accidents Act, 1855. The legislature had substituted the ordinary remedy of a civil suit in cases of Motor Accidents. The objects and reasons set out for Sections 110 to 110-F state as follows :

"Under the existing Section 110, powers to appoint persons to investigate and report on motor accidents have been given to State Governments. But the officers so appointed are not empowered to adjudicate on the liability of the insurer or on the amount of damages to be awarded, except at the express desire of the insurance company concerned. This provision has not helped persons of limited means in preferring claims on account of injury or death, because a court decree has to be obtained before the obligation of an Insurance Company to meet the claims can be enforced. It is, therefore, proposed to empower the State Government to appoint Motor Accidents Claims Tribunal to determine and award damages."

9. Section 110 of the Act provides for the appointment of Claims Tribunal for the purpose of adjudicating upon the claims for compensation. Section 110A provides for making an application for compensation. Section 110-B enables the Tribunal to hold an enquiry into the claim and may make an award determining the amount of compensation which appears to it to be just. The Tribunal may also specify the person or persons to whom compensation shall be paid. While making

the award the Tribunal shall also specify the amount which shall be paid by the insurer or owner or driver or by all or any of them, as the case may be. u/s 110-C the Tribunal is deemed to be a Civil Court and shall have all the powers of a Civil Court. Section 110-D provides for appeals. Section 110-F bars the jurisdiction of the Civil Court relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal. These provisions are self-contained code for adjudication to claims for compensation. The scope of the relevant provisions may require a detailed study.

10. The requisites of Section 110-B are;

(i) There must be an application for adjudication upon claims for compensation in respect of accidents.

(ii) All the parties shall be given opportunity.

(iii) The Tribunal is to hold an enquiry into the claims or each of the claim.

(iv) The Tribunal makes an award and determines the amount which appears just. (v) The Tribunal shall specify :

(a) Persons to whom compensation shall be paid.

(b) Amount which shall be paid by the insurer, owner or driver by all or any of them as the case may be.

The provisions of Section 110 to 110-F do not create a new right or remedy, but there is a change of forum in the form of Tribunal and is, therefore, substituted for Civil Court for adjudicating the claims of compensation in cases of motor vehicle accidents resulting in injuries. The Tribunal must determine the amount according to the substantive law of liability. Therefore, all the parties are involved and all the claims arising out of it should be adjudicated by the Tribunal. While determining the amount, the Tribunal should not only specify the persons who are entitled to receive compensation but also persons liable to pay it. It is mandatory on the part of the Tribunal to specify the amount. The word "specify", according to Chambers 20th Century Dictionary as a verb means to -- mention particularly; to make specific; constituting or determining a species: of special application or origin. "Specification" -- making; the act of specifying; a detailed description of requirement. According to Universal Dictionary : "specify" -- to state explicitly, especially as a definite requirement. According to Oxford Dictionary: "specify" --Name expressly, mention definitely (items, details, ingredients etc.); include in. On a plain reading, this Section mandates the Tribunal to specify a definite amount to be paid.

11. A Division Bench of Karnataka High Court in The General Manager, Karnataka State Road Transport Corporation, Bangalore Vs. Peerappa Parasappa Sangolli and Others, while analysing the Section 110-B had taken the view that the Section is substantial. They have held as follows (at pp. 158-159 of AIR) :

"The law in India which governs cases for compensation for tortuous acts of tort-

feasors is the law of torts. This branch of common law is literally borrowed from the common law of England. The Fatal Accidents Act was enacted in the year 1855 with the limited object of providing for compensation to families for loss occasioned by the death of a person on account of an actionable wrong. Such actionable wrong may be committed by a person while driving a motor vehicle or riding a horse or a bicycle. In the year 1855, the motor vehicle was neither invented nor was it in existence in India and though the 1855 Act has been modified up to 1967, there is no reference to motor vehicles in the Act. In the circumstances, the view of some High Courts that notwithstanding the provisions of Sections 110 to 110-F of the Act, the claim for compensation involving accidents caused by motor vehicles should be governed by the 1855 Act does not appear to be sound. The determination of compensation u/s 110-B of the Act is covered by the law of torts for that is the common law of the land and in the absence of any guidelines for determining compensation as provided for u/s 23 of the Land Acquisition Act or Sections 73 and 74 of the Contract Act or under the relevant provisions of the Industrial Disputes Act, the Claims Tribunal necessarily has to follow the common law of torts for determining compensation."

The net result of this discussion is that Sections 110-A to 110-F of the 1939 Act are not merely adjectival or procedural but also substantive in nature."

12. A Division Bench of the Madras High Court in Mohammed Habibullah and Another Vs. Seethammal, had taken the view that these Sections not only provide self-contained code for adjudication of claims to compensation on behalf of victims of motor accident but also a complete machinery for adjudication of such instance. We are in agreement with the above view.

13. While determining the amount of compensation, the Tribunal is called upon to decide not only the compensation which confers to it to be just, but the Tribunal shall also specify the persons to whom the compensation shall be paid and also specify the persons who shall pay the said amount. It may be the owner or driver or insurer or by all or any of them as the case may be. The determination of the compensation and the persons eligible for the compensation and the person who shall pay the compensation are the questions exclusively to be decided by the Tribunal. There is a specific bar of jurisdiction of civil courts u/s 110-F on the question relating to any claim for compensation which had been adjudicated upon by the Tribunal. In the light of these statutory provisions, it is not possible to accept the contention that the Civil Court is the forum for adjudicating upon the quantum of contribution to be made in case of composite negligence.

14. A Constitution Bench of the Supreme Court in M.C. Mehta and another Vs. Union of India and others, has held that law should keep pace with changing socio-economic norms where a law of the past does not fit in the present context, Court should evolve new law. Their Lordships observed as follows :

"Law has to grow in order to satisfy the needs of the fast-changing society and keep abreast with the economic developments taking place in the country. Law

cannot afford to remain static. The Court cannot allow judicial thinking to be constricted by reference to the law as it prevails in England or in any other foreign country. Though the Court should be prepared to receive light from whatever source it comes but it has to built up its own jurisprudence. It has to evolve new principles and lay down new norms which arise in a highly industrialised economy. If it is found that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, the Court should not hesitate to evolve such principle of liability merely because it has not been so done in England."

15. In *The Palghat Coimbatore Transport Co. Ltd. Vs. Narayanan and Others*, Varadachariar, J. speaking for the Bench had left open the question on the composite negligence in the following words :

"Whether, in this country, courts will in the absence of a corresponding statutory provision have the power to fix contribution as between tort-feasors is not necessary for the purpose of this case to consider."

In our view, the present statutory provisions have empowered the Tribunal to fix the compensation as between the tort-feasors.

16. The Supreme Court in *I.T. Officer v. Mohd. Kunchi* AIR 1969 SC 430 has held that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Their Lordships have referred to Maxwell on Interpretation of Statutes, the following :

"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution".

Sutherland Statutory Construction, Third Edition, Articles 5401 and 5402 state as follows :

"In a number of instances the courts have given statutes an extended operation without express or clear authorisation from the letter of the statute.

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It will be observed that the effect of the statutes in these cases is closely related to the situations where a statute is extended or restricted by its equity or spirit..... Thus the rule has become firmly established that an express grant of statutory power carries with it by necessary implication authority to use all reasonable means to make such grant effective.

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Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by

implication."

17. Therefore, assuming for the sake of argument that the Tribunal is not specifically authorised to apportion the liability or the contribution, it has to be held that the Tribunal has got the jurisdiction to apportion the liability for effective and proper adjudication of the claims.

18. If the claimants or the owner or driver were to further institute civil litigation for the apportionment of their liability and contributions it will also involve possibility of conflicting decision in the same matter. The civil court may be called upon to come to a different conclusion on the quantum or may even be compelled to take a different view on the factum of the accident. Rule 2, Order II of the CPC enjoins that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. On the question relating to the claim of the compensation a petition has to make the whole claim which has to be adjudicated by the Tribunal. Any omission to make the claim would be fatal as per Sub-rule (3) of Rule 2 of Order II CPC. To impose the burden on one person when admittedly the liability is equal or sometimes marginal would be arbitrary and opposed to justice, equity and good conscience. The object of these relevant provisions is to introduce Tribunals to determine and award damages. A further reference to Civil Court would prolong the litigations to decades, defeating the very object of speedy relief and settlement of issues. Therefore, there cannot be any further adjudication on the question, not only the quantum of compensation but also on the question who shall be liable to pay the compensation, since this has to be adjudicated u/s 110-B of the Act. The common law rule that no action for contribution was maintainable by one wrongdoer against another, viz., the rule in *Merryweather v. Nixon* was abolished by Law Reform (Married Women and Tort-feasors) Act, 1935. The Principle in *Merryweather v. Nixon* does not apply in India. The learned authors of Ratanlal & Dhirajlal in their Law of Torts, 23rd Edition, Chapter IX have analysed the applicability of the said rule and have stated at page 211 as follows :

"The apportionment of liability between the tort-feasors is to be made in such proportions as the Court thinks just and equitable having regard to the extent of the moral responsibility of the parties concerned for the damage caused."

The learned authors while dealing with the principles of joint tort-feasors have observed as follows :

"Joint tort-feasors are jointly and severally liable for the whole damage resulting from the tort. They may be sued jointly or severally. If sued jointly, the damages may be levied from all or either. Each is responsible for the injury sustained by his common act."

"In a suit for composite negligence, the plaintiff is entitled to sue all or any other negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole or more than his whole damage. He has a right to

recover the full amount of damages from any of the defendants."

19. This principle as enunciated for a composite negligence will be applicable in case of a civil suit, made possible in England by virtue of Land Reforms Act, 1935 and the Civil Liability (Contribution) Act 1978 of England. And similarly, The Kerala Torts (Miscellaneous Provisions) Act (Act 8/77) enables a claim or a suit for apportionment. Therefore, since the law of Tort as reversed in England provides or enables a civil suit for composite negligence to recover for the whole of the damage does not mean that the Tribunals constituted under the Special Act are prohibited from deciding and apportioning the liability to pay compensation. There is no bar limiting such adjudication. On the contrary, by such an apportionment orders, the claimants' rights are more crystallized and it further avoids multiplicity of proceedings.

20. The learned authors Ratanlal & Dhirajlal in the Law of Tort, 23rd Edn., page 211 have clearly opined for such a contribution in the following words :

"The correct view, it is submitted is that while the right of contribution is based on the principle of justice: that a burden which the law imposes on two men should not be borne wholly by one of them.

21. Winfield & Folowiez on Tort recognizes wherein in practice the contribution issue in cases of joint tort-feasors are decided in the main suit. "In practice, however, the contribution will normally be disposed of in the main action" (page 587, Chapter 25, Tort 11th Edn.). "It is however obviously desirable that a plaintiff shall if he reasonably can, sue in the same proceeding all the tort-feasors who are liable to him for the same damage (page 583, Ch. 25, Tort 11th Edn.).

22. Since in India Statutory Tribunals have been constituted, it is just and necessary that the contribution, if any, should be adjudicated and decided by the Tribunals.

23. Several High Courts in India have taken the view that Motor Accidents Tribunal are competent to apportion the liability. In V. Rajeswara Rao v. Karna Audemma 1977 A CJ 462. A Division Bench of the Andhra Pradesh High Court held that the Tribunal has not only to determine the compensation but has to specify the amount which has to be paid by the insurer, owner or driver of the vehicle. If two or more vehicles are involved in the accident, the view of the Division Bench was that on a proper ruling of Section 110-B the Tribunal has to specify the amounts payable by the driver or owner of each of the vehicle involved in the accident. In their view, it will lead to considerable hardship if the Tribunal merely declares that all of them are liable jointly and severally. The Tribunal accordingly in that case held that the liability has to be shared equally between the owner and the driver of the bus on the one hand and the owner of the tractor on the other.

24. The question of apportioning of the liability was considered by a Division

Bench of this Court in *National Insurance Co. Ltd. v. Sivasankara Pillay*, (1995) 1 Ker LT 51. This Court held that in a collision of two motor vehicles wherein the drivers of both the vehicles are joint tortfeasors. Section 110-B of the Motor Vehicles Act obliges the Tribunal not only to determine the amount of compensation, but to specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any one of them as the case may be. In *Narinderpal Singh Vs. Punjab State and Others*, a Division Bench of the Punjab and Haryana High Court had taken the view that Section 110-B enjoins upon the Tribunal not only to determine the amount of compensation payable but also the amount, which is payable by the Insurance Company or owner or driver of the vehicle, or by all or any of them. The Division Bench observed that in a given case it is possible that one vehicle may be insured and the other may belong to Government or a private person; but not insured, then also the Tribunal has to apportion the liability so that the insurance company would know its liability for the insured vehicle and of the other, that is, the Government or the private owner. In *Nagappaiah and etc. Vs. Bhaskara and Others*, the Division Bench of a Karnataka High Court has taken the view that it is settled law that in the case of composite negligence causing the accident all the persons concerned are jointly and severally liable. It is no doubt true, however, that u/s 110-B of the Motor Vehicles Act, there is a statutory duty cast on the court to fix the liability on the insurance company. Accordingly, the Division Bench fixed the liability of each vehicle at 50% in causing the accident.

25. In reference to the judgment referred to by learned counsel for the 1st respondent in *Velunni v. Vellakutty* (1989) 2 Ker LT 227 the attention of the Bench was not drawn to Motor Vehicles Amendment Act, 1969 (56 of 1969) wherein latter portion of Section 110-B was inserted enabling the Tribunal to specify the amount which shall be paid by the driver or owner. Whereas the subsequent Division Bench judgment in *National Insurance Co. Ltd. v. Sivasankara Pillay* (1995) 1 Ker LT 51 had taken note of the latter portion of Section 110-B and held that determination of the question is indispensable in the light of this provision.

26. The plea by the 4th respondent that the respondents 2 and 3 are liable for the accident cannot be countenanced. Except stating so in the statement, he had not let in evidence to establish his case. He had not challenged the finding by filing an appeal. Besides, even here no acceptable argument is advanced to avoid his liability. No materials are placed or circumstances pointed out to differ from the finding of the Tribunal. Hence we are unable to accept this plea.

27. When the evidence of PW-1 is considered along with the scene mahazar, Ext.A1, it is seen that the width of the tarred portion of the road is three metre and 97 cm. and that there is a collision between the vehicles as both of them did not give the way for their easy pass. Excepting PW-1, who is the driver of lorry KLT-605, no other person had been examined. Therefore, the finding of the Tribunal that the negligence is to be shared equally by the owners and drivers of

the respective vehicles, cannot be assailed. There is no evidence to exclude the negligence of the driver of the vehicle KLK-3580 or to show that he was less negligent.

28. In the above circumstances, we confirm the quantum of compensation of Rs. 50,930/-with interest at 12% per annum from 9-12-1987 till the realisation of the amount. We hold that respondents 2 and 3 on the one hand and respondents 4 and 5 on the other are liable to pay 50% of the compensation respectively. The Insurance Company, the appellant herein will indemnify 50% of the liability of the respondents 2 and 3, driver and owner of KLF 605.

The award is set aside to the above extent. Appeal is allowed as indicated above.