

(2012) 08 KL CK 0187
In the High Court Of Kerala
Case No : M.A.C.A. No. 2530 of 2008

New India Assurance Co. Ltd.

APPELLANT

Vs

Kamalamma

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2013) 1 ACC 792 : (2013) ACJ 1941 : (2012) 4 KLJ 235 : (2012) 4 KLT 84

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : Mathews Jacob and P. Jacob Mathew, for the Appellant; Sebastian Philip, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J.—The Insurance Company is in appeal. Respondents 1 to 4 approached the Motor Accidents Claims Tribunal claiming compensation for the death of one Bhaskaran Pillai, who is said to have been killed in a road traffic accident on 10.10.1996. The allegation is that while the deceased was travelling by a bus, owned by the 5th respondent, he fell down and sustained fatal injuries. According to the claimants, the accident arose out of the use of the vehicle. Originally, the claim was filed under S. 140 of the Motor Vehicles Act for a sum of Rs. 150,000/- as compensation. Subsequently, the claim was converted to one under S. 163 A.

2. Against the claim of Rs. 2,50,000/-, the learned Tribunal passed an award for Rs. 71,42,500/- together with interest, directing the appellant company to pay the amount of compensation, as the vehicle said to have been involved in the accident was covered by a valid policy issued by it.

3. We have heard the learned senior counsel for the appellant insurance company and the learned counsel for the respondents/claimants. We have also

perused the impugned award and other relevant records.

4. The appellant insurance company, while admitting the policy issued to the bus said to have been involved in the accident, disputed their liability by contending that the death of the deceased was not due to any accident. According to it, it happened when the conductor of the aforesaid bus intentionally kicked the deceased out of the bus as a result of which only, he sustained fatal injuries. It was further contended that the conductor of the bus was charge-sheeted under S.302 I.P.C. and hence, the death was not due to an accident arising out of the use of the vehicle. Thus, it denied its liability to pay any compensation.

5. The learned senior counsel for the appellant, on the basis of Exts. A1 and A4, would contend that the death of the deceased arose out of an intentional act of an employee of the bus. Ext. A1 is the F.I.R. in Crime No. 288/1996 of the Pandalam Police Station and Ext. A4 is the copy of the charge sheet in the said crime, which was laid before the Magistrate Court concerned by the investigating officer. Ext. A4 would reveal that the conductor of the bus was charge-sheeted under S. 302 I.P.C., i.e. for the murder of the deceased. The main argument advanced by the learned senior counsel is that murder, being an intentional act cannot be treated as an accident and thus, the claim for compensation under the Motor Vehicles Act is not maintainable.

6. It is relevant to note that the word "accident" is not defined anywhere in the Act. The meaning of the word "accident" as per Oxford Dictionary is "an unpleasant event that happens incidentally and causes damage, injuries etc." The basis of the claim petitions arising out of the use of motor vehicles is essentially "negligence". In law of tort, the word "negligence" is understood either as the state of mind of a party in doing an act or as a conduct, which the law deems wrongful. Now a days negligence has become an independent, specific tort in itself. To decide whether a man is guilty of negligent conduct or not, courts shall not be guided only by his mental attitude at the moment of the act. An external standard of a reasonable man placed in similar circumstances has to be applied to arrive at the conclusion. The pertinent question to be answered is whether a reasonable man placed in similar circumstances as the alleged wrong doer would have acted in that way to cause damage to the claimant? If the answer is "no", he should be held liable. There is a valid reason for adopting such a course of action. If the wrong doers are permitted to set up their individual state of mind as a defence, it would be easy for them to wriggle out of the liability of paying compensation. That is why, Winfield has defined "negligence" as a tort, as the breach of legal duty to take care, which results in damage, undesired by the defendant to the plaintiff.

7. "Intention" which is the main cause of most of the crimes, on the other hand, means the purpose or design of doing an act forbidden by the criminal law without just cause or excuse. The act is intentional if it exists in idea before it exists in fact. It is the general rule that every sane man is presumed to intend the necessary or the natural and probable consequences of his acts, and this

presumption of law will prevail unless from a consideration of all the evidence the Court entertains a reasonable doubt whether such intention existed. Indian Penal Code practically recognises three degrees of culpable homicides for the purpose of fixing punishment, depending upon the gravity of the offence. The first one which may be called as culpable homicide of the first degree is the gravest form which is defined in S.300 as "murder". The second one is culpable homicide of the second degree which is punishable under the first part of S.304 I.P.C. The third one is the lowest type that is culpable homicide of the third degree, the punishment of which is provided under Second Part of S.304. The state of mind of the wrong doer gives the tool for distinguishing one from the other. The distinguishing feature between "intention" and "negligence" is that while the intentional wrong doer desires the consequence of his act, the negligent wrong doer never desires for the consequence.

8. In the instant case, there was some exchange of words between the conductor of the bus and the deceased, during the course of which the conductor stamped the deceased with foot resulting in his fall from the bus. In *United India Insurance Co. Ltd. Vs. Thankamma and Others*, , a Division Bench of this Court observed that, only if the dominant intention of the act of felony is to kill any particular person, then alone such killing can be termed as a murder simplicitor, otherwise it is an accidental murder. There, this court was considering the implication of the murder of a driver by a passenger in the vehicle, pursuant to an altercation between them. Relying on the decision of the Apex Court in *Rita Devi v. New India Assurance Co. Ltd* (2000 (2) KLT 526 (SC)), it was held that the incident in that case arose out of the use of a motor vehicle giving rise to a claim for damages. In the decision rendered by the Apex Court referred to above, the difference between a murder simplicitor and an accidental murder was discussed. The Apex Court held that the distinction depends upon the proximity of cause of such murder. It was held that in a murder simplicitor, the dominant intention of the act of felony is to kill any particular person whereas, the cause of murder is not originally intended in accidental murders. In the instant case, it is true that the conductor of the bus was charge sheeted under S.302 I.P.C. But, what could be discerned from the evidence is that the actual genesis of the incident was an unpremeditated act. Hence it is doubtful whether the conductor of the bus desired the consequence, i.e., the death of Bhaskara Pillai. Acts where the mental conditions of the wrongdoer cannot be ascertained with reasonable certainty, are to be treated as accidental, which will give rise to a claim for damages. Hence we hold that this was an accidental murder which arose out of the use of a vehicle and the respondents/claimants who are the legal heirs cum dependents of the deceased Bhaskaran Pillai are entitled to get compensation. As we see no reason to interfere with the finding entered into by the learned Tribunal, we dismiss the appeal without any cost.