
(1987) 07 KL CK 0001
In the High Court Of Kerala
Case No : M.F.A No. 16 of 1986

Padmanabhan Nair

APPELLANT

Vs

Narayanikutty and Another

RESPONDENT

Date of Decision : 28-07-1987

Acts Referred:

Citation : (1988) ACJ 58

Hon'ble Judges : V. Bhaskaran Nambiar, J; T.L. Viswanatha Iyer, J

Bench : Division Bench

Advocate : K. Aravindaksha Menon, for the Appellant; E.V. Nayanar and S. Parameswaran, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Iyer, J.—The 1st Respondent is the widow of one V.K. Sreedharan Nambiar who died on 23.10.1981 in the Calicut Medical College Hospital as a result of burns sustained while travelling in bus KLN 723 belonging to the Appellant on 12.10.1981. He was a passenger in the bus on its 1.40 p.m. trip from Cannanore to Vellachal. When the bus reached near a place called Macheri Srambi, a petrol can kept in a gunny bag under the back seat of the bus caught fire from a beedi thrown by a passenger in the bus. The deceased who was sitting in the back seat of the bus, was engulfed in the fire and was severely burnt. He was taken to the Headquarters Hospital at Cannanore and then on to the Medical College, Calicut for treatment, where he succumbed to the injuries on 23.10.1981. The claim was, therefore, filed before the Motor Accidents Claims Tribunal, Tellicherry, u/s 110-A of the Motor Vehicles Act, 1939 ("the Act" in brief), by the wife of the deceased for compensation in the sum of Rs. 1,25,000/- on the allegation that the deceased was a pharmacist-cum-homeo doctor earning not less than Rs. 1,000/- per month.

2. The Appellant, bus owner, claimed that the fire was caused on account of the negligence of the deceased himself. According to him, the deceased was smoking in the bus, despite warning by the conductor. The bus was halted at the

Cannanore bus stand at about 1.00 p.m., to commence its onward journey to Vellachal at 1.40 p.m. The driver and the conductor had gone for their noon meals during which time the bus had got loaded with passengers and luggage. The deceased, who had boarded the bus was in an inebriated condition. After the bus had proceeded for about 6 km. on its journey, it was stopped for some passengers to get down. At that time, the deceased lit a cigarette and "probably" he dropped the burning match stick on his lap, causing his clothes to burn. The sparks from this fire ignited the gunny bag containing the petrol can. Despite the fire, and the escape of the other passengers from the bus, the deceased remained sitting amidst the flames. The death of the deceased was, therefore, attributable to his own negligence. The Appellant also contested the amount of income which the deceased was alleged to be earning.

3. The insurer, who was the second Respondent in the proceedings, also contested the claim.

4. The Tribunal considered the evidence in detail and came to the conclusion that it was the "culpable negligence" of the employees of the Appellant that had resulted in the accident. The deceased sustained the injuries which resulted in his death while travelling in the bus as a passenger. The Tribunal then went on to consider the question of quantum of damages, and fixed the dependence of the claimant wife at Rs. 150/- per month; or Rs. 1,800/- per year. Adopting 16 as a reasonable multiplier, the compensation payable came to Rs. 28,800/-, out of which a margin was allowed for uncertainties in life, and for accelerated payment. The compensation to be paid was thus fixed at Rs. 26,000/-. A sum of Rs. 3,000/- was also awarded for loss of consortium. The total compensation payable was thus determined as Rs. 29,000/-, out of which the insurer was liable to the extent of Rs. 5,000/-. The balance was directed to be paid by the Appellant. The award was passed accordingly.

5. The owner of the bus challenges this award. The claimant has cross-appealed for award of the entire amount of Rs. 1,25,000/- claimed by her in petition u/s 110-A

6. The Tribunal has found that the accident was caused due to the culpable negligence of the employees of the Appellant. In doing so, the entire evidence in the matter has been discussed in detail by the Tribunal. The evidence has been carefully analysed, the various aspects considered and all possibilities adverted to before casting the blame on the employees of the Appellant. We are in agreement with this finding of the Tribunal. We may in particular note that Rule 361 (2) of the Kerala Motor Vehicles Rules, 1961 (the "Rules" for short) stipulates that no driver or other person in charge of a motor vehicle shall allow petrol to be carried in the vehicle. The Appellant's contention in his counter statement was that the other passengers in the bus had disowned the ownership of the petrol, the suggestion obviously being that the petrol was being carried by the deceased himself. However, there is absolutely no evidence in support of this plea; nor for the further contention that the deceased was intoxicated, due to

consumption of liquor or drugs or "by pethedine injection". In fact the evidence is to the contrary. The Appellant's employees had not taken the reasonable care expected of them to ensure that petrol was not loaded into the bus. Rule 361 (2) is imperative; in this respect. Neither the conductor nor the driver of the bus was examined. There is absolutely no evidence of any precautions (as envisaged in Rule 100 (d) of the Rules) having been taken to ensure that petrol is not carried or that the passengers are not endangered. A conspectus of the evidence leads only to the conclusion that it was this negligence of the employees in allowing the petrol to be carried in the bus, in violation of Rule 361 (2), that resulted in the accident.

7. The two points seriously urged were regarding the jurisdiction of the Tribunal to deal with this matter and the quantum of compensation. This latter point also arises for consideration in the memorandum of cross-objections. The question raised before us is that the vehicle (bus) as such has not been involved in any accident, that, in any case, the accident did not arise out of the "use" of the vehicle and therefore, the Tribunal did not have jurisdiction to deal with the claim. Counsel for the Appellant relies on the interpretation placed on the word "use" in various decisions rendered under the provisions of the Code of Criminal Procedure, namely, AIR 1931 565 (Lahore) In Re: In Re: Abdul Azeez, and Balamal Matlomal Vs. State of Gujarat, Reference was also made to the decision of this Court in State of Kerala Vs. Gopalan Nair,

8. The Tribunal is one constituted u/s 110 of the Motor Vehicles Act, IV of 1939. This provision empowers the State Government by notification in the Official Gazette to constitute one or more Motor Accidents Claims Tribunals for such areas as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, two of the essential jurisdictional facts for the Tribunal to have seizin of the claim are, therefore, the use of a motor vehicle, and an accident arising therefrom.

9. The jurisdiction of the Tribunal is attracted if there is an accident involving death of, or bodily injury to, a person. This accident should arise out of the use of a motor vehicle. The primary fact Which, therefore, attracts the jurisdiction of the Tribunal is the use of a motor vehicle. The word "use" is used in the section in a wide sense. It covers all employments of the motor vehicle, so that whenever the vehicle is put into action or service, there is "user" of the vehicle within the provisions of Section 110, 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 any purposes whatsoever. This, without anything more, is sufficient to attract Section 110. It is not the purpose, for which, or the person who employs or uses the vehicle that matters. Therefore, whenever any accident occurs causing death of or injury to persons because of the vehicle or in the course of its user the jurisdiction of the

Claims Tribunal arises.

10. Reference may, in this connection, be made to the decision of the Karnataka High Court in *The General Manager, Karnataka State Road Transport Corporation Vs. Sangappa Satalingappa Goudar and Others*, In that case a vehicle belonging to the Karnataka State Road Transport Corporation had been stopped on slope unattended. The bus suddenly started moving down and dashed against a tea stall causing considerable damage to the tea stall as also injuries to the claimant, the owner of the stall. The claimant applied for compensation for injuries to his person, and for damages caused to his property. The contention in defence was that the vehicle moved down the slope, by itself, as its gear got released, and as such it could not be said that the accident arose on account of the use of the motor vehicle or due to the negligence of the driver and, therefore, the Tribunal had no jurisdiction to entertain the claim. The Division Bench in the Karnataka High Court ruled:

It is not disputed before us that the bus was going on a road. It is further not disputed that the bus was halted on a slope by the driver. Thus, it is obvious that the bus was in use and the negligent act of the driver occurred while he was using the bus. Hence, it is manifest that the accident has arisen out of the use of the motor vehicle.

(Emphasis added)

The High Court of Delhi had also occasion to consider the scope of the section in the case reported in *Pushpa Rani Vs. Anokha Singh etc.*, That was a case where a truck belonging to the second Respondent was lying stationary on the road, with a broken axle. The truck had been parked on the roadside. The deceased who was driving a motor cycle during the dark night at about 10.45 p.m., at a time when there were no street lights on the road, dashed against the rear of the stationary truck. The rider and his two children died on the spot. Claim was made against the owner of the truck and it was met with the plea that the vehicle was not in use and hence the Tribunal had no jurisdiction. It was held:

The word "use" occurring in Section 110 of the Act has been used in a wide sense. It covers all employments of the motor vehicle on the public places including its driving, parking, keeping stationary, repairing, leaving unattended on the road or for any other purpose. The driver of the offending vehicle had certainly taken out the vehicle and had driven it on the public road and had parked it, as its axle had broken down and then left it without reasonable precautions. If a vehicle is being driven and is stopped or parked for being repaired or otherwise, then it cannot be said that the vehicle is not being used. Supposing some driver thinks fit to stop a vehicle in the middle of a busy road and to start repairing it or decides to rest in the seat, it cannot be said that he can escape the liability by pleading that at that time the vehicle was not being used.

... The expression is, therefore, employed in a wide sense and is practically

synonymous with bringing out a motor vehicle in a public place, and using the public place for the motor vehicle. The condition in which the motor vehicle arrives or is kept and the purpose for which it is being driven or is being kept stationary is not a jurisdictional fact to determine the jurisdiction of the Tribunal to decide the claim, although these questions may or may not have any bearing on the merits of the case.

The court then adverted to the use of the term in certain other provisions of the Act and observed that those provisions did not control or limit the connotation of the term "use" in Sections 110 and 110-A of the Act. The jurisdiction of the Tribunal to deal with this dispute was thus upheld.

11. In *Chaurasia and Co. and Another Vs. Smt. Pramila Rao and Others*, one Satyanarayan Rao was a passenger in the bus, which was involved in the accident. The vehicle was driven over a causeway across the Sunar river. The river was overflowing the causeway. Nevertheless, the driver drove on. The bus skidded and one of its wheels got stuck in the stones embedded on the sides of the causeway. The passengers remained in the bus, but when they found the water level rising, they climbed to the top of the bus. After some time the bus was swept away by the flood, it rolled over, throwing the passengers on the top into the surging waters. Satyanarayan Rao was one of those killed, and there was a claim for compensation by his widow and children before the Tribunal constituted u/s 110-A. One of the defences set up was that the Tribunal had no jurisdiction as the accident was stated to be one not arising out of the use of the vehicle. The contention was overruled and the jurisdiction of the Tribunal upheld.

12. We may also refer to *Elliott v. Grey* 1959 (3) All ER 733, where the Queen's Bench considered the meaning of the phrase "to use a motor vehicle on a road" appearing in Section 35 (I) of the Road Traffic Act, 1930. That was a case where the Appellant had been charged u/s 35(1) of the said Act for using a motor car on a road on February 7, 1959, without there being in force in relation to the user, an insurance policy in respect of third party risks. On February 7, 1959, the car was standing on the road outside the Appellant's house, having been placed there by the Appellant after it had broken down on December 20, 1958. Before February 7, 1959, the Appellant had jacked up the wheels, removed the battery and terminated his insurance cover. On February 7, 1959 he had unjacked the wheels, cleaned the car and sent its battery to be recharged, but the car could not be mechanically propelled because the engine would not work. In fact he had no intention of driving it on that day or of moving it from its position on the road. The question was whether on that day the car was being used by him within the meaning of Section 35(1), which read:

Subject to the provisions of this part of this Act, it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force....

Lord Parker, C.J., speaking for the court observed:

In the present case, although this car could not be driven, there is nothing to suggest that it could not be moved. As I pointed out in argument, for all we know it was on the top of a hill and a little boy could release the brake and the car could go careering down the hill. In the absence, at any rate, of a finding that it was immovable as, for instance, that the wheels were removed or something of that sort, I cannot bring myself to think that this car was not fairly and squarely within the words which I have used, "have the use of a motor vehicle on the road". Counsel for the Respondent further contended that, even if the car was completely immobilised, an offence would be committed, but for my part I find it unnecessary in the present case to go so far. Here was a car which could be moved, albeit not driven and, in those circumstances I think that the owner had the use of it on a road within the meaning of Section 35(1).

The court thus took the view that "use" in the section meant "to have the use of, and even if the vehicle could not be driven the Appellant had the "use" of it.

13. We are generally in agreement with the view expressed in the above decisions. Any accident occurring in the course of user for carriage of passengers, or otherwise, is liable to be compensated through the forum provided u/s 110. This is in accord with the intent of the section which is to afford speedy, cheap and effective remedy in all cases involving motor vehicles. The basic requirement of such claims is only that it should arise out of the use of motor vehicle, whether the vehicle itself got damaged in the process or not. There is no warrant for the contention that the accident should be to the vehicle itself. All that is required is that there should be accident, i.e., something unexpected and unintended, and that should arise out of the user of the vehicle. In that event, the jurisdiction of the Tribunal is attracted. We, therefore, overrule this contention of counsel for the Appellant.

14. The Tribunal has fixed the monthly dependence of the claimant on the husband at Rs. 150/-. This has been capitalised sixteen times. Out of the said amount, margin was allowed for uncertainties in life and for accelerated payment, and the compensation payable was fixed at Rs. 26,000/-. In addition, the 1st Respondent was also awarded an amount of Rs. 3,000/- for loss of consortium. The Appellant challenges this award as exorbitant, but we do not find any merit in his contention. The 1st Respondent has, on the other hand, filed memorandum of cross-objections and claimed award of Rs. 1,25,000/- in all as claimed by her before the Tribunal.

15. The deceased was aged 45 years at the time of his death, (vide Exh. A1). The first Respondent claimant herself was aged about 35 years at the time when her husband Sreedharan Nambiar died (vide Exh. A5). The deceased was a registered Pharmacist, Exh. A2 being the certificate issued to him by the Pharmacy Council of Kerala under Central Act 8 of 1948. This enured till 1982. He had also been licensed to sell, stock or exhibit for sale, or distribute drugs. Exh. A3 is the renewal of this licence upto 31.12.1974. There is no evidence of this licence having been renewed subsequently. According to the claimant, the

deceased was having an income of Rs. 1,000/- per mensem. There was not much of cross-examination of the first Respondent claimant as PW 1, on this aspect. Part of the cross-examination on this aspect is extracted below:

(Omitted as in Vernacular)

Though the suggestion was that the deceased was not a Homeo Practitioner, still the Appellant himself as RW 1 admitted that the deceased was once a Homeo Doctor (Homeopathy practice). There is also a profession tax receipt Exh. A4 issued by Kizhur Chavassery Panchayat for having collected Rs. 8/- as profession tax for the year 1979-80 u/s 69 of the Kerala Panchayats Act, 1960. The amount collected is appropriate to the slab Rs. 1,000-1,800/- per half year, but we do not take this as conclusive to peg down the income. Assessments to profession tax are not based on any returns filed, but on some estimates made by the Panchayat authorities themselves. It is not proved to be based on any enquiry. PW 3, one of the witnesses examined on behalf of the claimant, had stated that the deceased had no employment at the time of his death. But he corrected himself in re-examination that what he meant was that the deceased had not employment in his native place. The lower court has fixed the dependence of the claimant on the husband at Rs. 150/- per month. The claimant had a definite case in the claim petition that the deceased had an income of Rs. 1,000/- per month and she affirmed that in her deposition as PW 1. As pointed out earlier, there was no effective cross-examination on that point. The deceased was a qualified person, with licence to sell drugs, and a registered Pharmacist under the Pharmacy Act. He was admittedly a Homeo Practitioner. There is no valid evidence to the contrary on the side of the Respondents. In the circumstances we are inclined to accept the testimony of PW 1 about the income of the deceased.

16. The claimant has stated that she had no other source of income and was relying on her husband for livelihood. As such we would fix her dependence on the deceased at Rs. 300/-per month. The deceased was only 45 years old and was not suffering from any disease. He was also not having any bad habits, and all the witnesses on the side of the claimant have uniformly spoken about it. It was only a wild allegation made by the Appellant that the deceased was either intoxicated or drug addicted while he was in the bus; the said case was also suggested to PW 1, when she was examined, but stoutly denied by her. The deceased can be expected to have atleast another 20 years of life in the normal course and we will fix the compensation on that basis. Out of the compensation payable, some allowance has to be made for uncertainties in life as also for accelerated payment. We will, therefore, fix the compensation payable at Rs. 65,000/-. We also feel that the amount of Rs. 3,000/- fixed as compensation for loss of consortium is too low having regard to the fairly young age of both the claimant and her husband. We will fix the compensation under this head at Rs. 7,500/-. The aggregate compensation thus payable is Rs. 72,500/-.

17. The Tribunal had awarded interest at 6 per cent. The claimant contends that

this is too low having regard to the decision of the Supreme Court in Smt. Chameli Wati and Another Vs. Municipal Corporation of Delhi and Others, Therein interest at 12 per cent was awarded. The claimant is thus entitled to interest on the amounts awarded at 12 per cent per annum.

18. We have fixed the above amounts taking into account the inflationary trends and the falling value of the rupee, as noted by this Court in P.K. Krishnan Nair and Others Vs. K. Karukaran Nair and Others, .

The appeal is therefore, dismissed. The memorandum of cross-objections filed by the first Respondent is partly allowed by fixing the compensation payable as Rs. 72,500/- with interest thereon at 12 per cent per annum from the date of the award of the Tribunal, namely, 21st June, 1985 and proportionate costs before the Tribunal. Rs. 5,000/- out of this with interest will be paid by the second Respondent-insurance company. The parties shall suffer their respective costs in the cross-objections.