
(2015) 06 KL CK 0096

In the High Court Of Kerala

Case No : M.A.C.A. Nos. 1400 and 1918 of 2008

Parukutty and Others

APPELLANT

Vs

K.P. Joseph and Others

RESPONDENT

Date of Decision : 12-06-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1)(b)(i), 2(24), 2(34)
Penal Code, 1860 (IPC) — Section 304A

Citation : (2015) 4 ACC 741 : (2016) ACJ 704 : (2016) 2 ALLMR 90 : (2015) 4 KLJ 100 : (2015) 3 KLT 860

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

Bench : Division Bench

Advocate : P.V. Baby and A.N. Santhosh, for the Appellant

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—Both these appeals are from the award in O.P.(MV) No. 653/2002 of the Motor Accidents Claims Tribunal, Irinjalakkuda. In M.A.C.A. No. 1400/2008, the claimants are the appellants and in the other appeal, the owner and driver of the offending vehicle are the appellants.

2. At the outset, the learned counsel for the appellants submitted that the view taken by the Tribunal that the Insurance Company is not liable to satisfy the award is not correct. The learned counsel relied upon various judgments of this Court explaining the meaning of the term "public place" under Section 147(1)(b) (i) of the Act. According to the learned counsel for the appellants, the Tribunal's view goes against the said legal position rendered by this court in various judgments.

3. The learned counsel for the Insurance Company submitted that going by the facts of the case, the view taken by the Tribunal cannot be said to be faulty.

4. Before going to the legal issues raised, we will refer to the necessary facts to analyse the contentions.

The claimants are the widow and children of one Sasidharan Nair who died in a motor accident at Vasupuram on 21.01.2002. He was working as Grade II Operator in the Electrical wing of the Minor Irrigation Department under the Government. It was alleged in the petition that while he was standing near a well at the side of the public way near the property of one Narayanankutty, a tempo van bearing Reg. No. KL-8/F 6318 driven by the second respondent before the Tribunal, which was heavily loaded with bundles of harvested paddy crops in the platform came along the public way and the load hit on the body of late Sasidharan as a result of which he fell in the nearby well. Later he succumbed to the fatal injuries sustained in the said fall.

5. Before the Tribunal, the second claimant was examined as PW1 and Exts. A1 to A9 were marked. Ext. B1 is the document marked on the side of the respondents, which is the copy of the Insurance policy.

6. Much argument was raised based on the contents of the police records as well as the evidence of P.W. 1 as it is pointed out by the learned counsel for the Insurance Company that the spot of accident cannot be reckoned as a public place. Ext. A2 is the mahazer prepared by the police. The spot of accident is shown as the north eastern corner of the court yard of a residential compound wherein one Narayanankutty, S/o Subadrama is residing with his family. The well is located in the said corner. It is noted in the scene mahazer that there are four electrical lines drawn at a height of 3 m. 20 cm. and about one metre north of the well. The police have also recorded that throughout the entire court yard, the harvested crops have been stored. On the north of it at a distance of 15 metre there is a residential house of one Kallyanikutty Amma and the paramba and about 50 metres north east the residential compound and paramba of one Narayanan Namboodiri and on the east is the residential compound of the complainant. Significantly it is also noticed that just on the western side of the compound there is a Panchayath road located north south and there are residential buildings on the north of it.

7. In the police charge, which is marked as Ext. A3, the driver was arrayed as an accused and the offence alleged is under Section 304A IPC. It is stated that the accident occurred when the driver took the vehicle backwards to the residential court yard of Narayanankutty. At that point of time, the heavy load of harvested crop hit against the body of Sasidharan and caused him to fall down in the well and he sustained serious injuries to the spinal cord. He died in the hospital on 25.1.2002 at 5 p.m. in the postmortem report, the opinion as to cause of death is shown as the injury sustained to cervical vertebrae involving spinal cord.

8. We will have to assess the various aspects in the light of the above documents as well as the evidence of P.W. 1.

9. We will now come to the deposition of P.W. 1. He is the son of late Sasidharan Nair and in the chief examination, he has deposed that the accident spot is near the court yard of the residential compound of Narayanankutty. The well is

situated near the public way adjacent to the court yard itself. He fell down after he was hit by the harvested crop loaded in the vehicle. It is also deposed that the public way was being used by farmers and other members of the public in the locality for taking tractor etc. In the cross examination he has stated that the vehicle had to be taken through the public road and only since the harvested crop was projecting outside the platform, it happened to hit the deceased. According to him, the accident spot noted in Ext. A2 is the part of the paramba used by the public as a public way. He has also stated that residents are using the said place as a public way as permitted by the owner Smt. Subhadramma. According to him, it was being used as a public way.

10. The learned counsel for the appellants therefore submitted that what is important to be noticed is that the vehicle was used in a place where people had access. There was no restricted entry to that place and therefore the vehicle being a goods vehicle and as it was used to reach that place for unloading the harvested crop, by no stretch of imagination it can be said that it is a totally private place.

11. In this context, we will refer to the definition of the term "public place" under Section 2(34) which reads as follows:

"public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage."

12. It will include a road, street, way or other place, whether a thoroughfare or not. In the light of the said definition also, we will have to examine the question.

13. Heavy reliance is placed by the learned counsel for the appellants on the following decisions of this Court in United India Insurance Co. Ltd. Vs. Pierce Leslie India Ltd. and Others, (2000) 2 ACC 146 : (2000) ACJ 1227 : (2000) 2 ILR (Ker) 365 , Alias Vs. Paul, (2003) 3 ACC 377 : (2004) ACJ 158 : AIR 2004 Ker 214 : (2003) 3 ILR (Ker) 552 : (2003) 2 KLT 992 , United India Insurance Company Ltd. Vs. Smt. Asha Rani, (2002) 1 ACC 134 : (2002) ACJ 134 and Rajan P. Vs. K.J. John and Others, (2006) ACJ 2631 : AIR 2009 Ker 136 : (2009) 1 ILR (Ker) 448 : (2009) 1 KLJ 618 : (2009) 1 KLT 573 . In all these decisions, the question considered is with respect to the meaning of the term "public place".

14. In United India Insurance Co. Ltd. Vs. Pierce Leslie India Ltd. and Others, (2000) 2 ACC 146 : (2000) ACJ 1227 : (2000) 2 ILR (Ker) 365 , a Division Bench of this court considered Section 95(1)(b)(i) of the Motor Vehicles Act, 1939. There a lorry bearing registration number K.E.D. 477 owned by the second respondent was allowed to be taken inside the factory and to unload coffee. While so unloading it hit against one of the buildings of the factory and thus damage was caused. After referring to the definition of "public place" under Section 2(24) and after considering the dictum laid down in United India Insurance Co. Ltd. Vs. Lakshmi, (1997) 3 ILR (Ker) 354 , it has been held as follows in paragraph 4 thus:

"The main argument advanced by the counsel is that the accident took place in a private place and therefore the above provision would not apply. A Division Bench of this Court where one of us (Mohammed, J.) was a party had occasion to deal with an identical question in *United India Insurance Co. Ltd. Vs. Lakshmi*, (1997) 3 ILR (Ker) 354 . After quoting the observation of Barry, J. in *R. v. Kane and Ors.*, (1965) 1 All. E.R. 705) the Division Bench said:

"In substance, a place is a "public place" though it is private property when it is shown that the public are in the habit of resorting to it and no one is prevented therefrom so resorting to it".

As far as the present case is concerned, what we could gather is that the contract between the owner of the lorry and the owner of the factory was to deliver the goods at the factory premises. When the lorry with the goods reached the gate of the factory it was allowed to go inside and off load the goods at the premises of the factory. When such permission is granted then the transport of goods inside the premises of the factory cannot be treated to be a transport in a private place."

15. It is to be noticed that in *United India Insurance Company Ltd. v. Lakshmi* (1997(1) KLT 449), their Lordships had referred to the judgment in *R.V. Kane and Ors.*[(1965) 1 All. E.R. 705] and held that even if it is a private property, a place will be a public place when it is shown that the public are in the habit of resorting to it and no one is prevented therefrom so resorting to it.

16. In *Alias Vs. Paul*, (2003) 3 ACC 377 : (2004) ACJ 158 : AIR 2004 Ker 214 : (2003) 3 ILR (Ker) 552 : (2003) 2 KLT 992 , the accident occurred in a workshop which was considered as a public place. In paragraph 5, after referring to the dictum laid down in *United India Insurance Co. Ltd. v. Lakshmi* (1997(1) KLT 449) and *United India Insurance Co. Ltd. Vs. Pierce Leslie India Ltd. and Others*, (2000) 2 ACC 146 : (2000) ACJ 1227 : (2000) 2 ILR (Ker) 365 , it has been held as follows:

"It is clear that reading of the Section as a whole would show that third party risks are covered if there is an access to the public in the place where the accident occurred. Here we hold that workshop also is a public place within the meaning of S. 2(24) of the Act as public have access to that place and insurance company cannot escape from liability on the ground that accident happened in a private place."

17. The next decision is by a learned Single Judge of the Punjab High Court in *United India Insurance Company Ltd. Vs. Smt. Asha Rani*, (2002) 1 ACC 134 : (2002) ACJ 134 There, the learned Judge has held as follows:

"Not only the weight of the judicial pronouncements is in favour of the finding that where the public enter with permission would become a public place for the purposes of the Motor Vehicles Act, but this necessarily is the only conclusion. It has already been referred to above that once the public has access to a place

with permission and they have entered the place, necessarily it would for the purpose of the said provision be a public place. There is no other conclusion that can be so arrived at because otherwise the Legislature would have not used the word " access" and instead would have used the word " private place" which has been so excluded.

18. Significantly, it has been held that once the public has access to a place with permission and they have entered the place necessarily it would, for the purposes of Section 2(24) of the Motor Vehicles Act, be a public place.

19. The question came before another Division Bench again for consideration in Rajan P. Vs. K.J. John and Others, (2006) ACJ 2631 : AIR 2009 Ker 136 : (2009) 1 ILR (Ker) 448 : (2009) 1 KLJ 618 : (2009) 1 KLT 573 . There the facts of the case show that on the date of the accident a load of marble was being unloaded in the house premises of a person who purchased and transported marble to his house in the same truck. While unloading it, the driver of the offending vehicle took it in the reverse gear which lead to a marble piece falling on the left leg of the appellant causing serious injuries. It was the contention of the Insurance Company that the accident occurred in a private premises namely the compound of a house and therefore it cannot be treated as one that has occurred in a public place. After referring to the dictum laid down in United India Insurance Co. Ltd. Vs. Pierce Leslie India Ltd. and Others, (2000) 2 ACC 146 : (2000) ACJ 1227 : (2000) 2 ILR (Ker) 365 and Alias Vs. Paul, (2003) 3 ACC 377 : (2004) ACJ 158 : AIR 2004 Ker 214 : (2003) 3 ILR (Ker) 552 : (2003) 2 KLT 992 , the Division Bench has taken the following view:

"From the above we are of the view that public place does not have a restricted meaning in as much as it is not to be taken as a place where public have uncontrolled access at all times. "Public place" for the purpose of the Act has to be understood with reference to the places to which a vehicle has access. It is specifically mentioned in the definition that any place of stand at which passengers are picked up or set down by a stage carriage is a public place. While this applies to vehicles carrying passengers, the definition does not deal with places of access to goods vehicles. We are of the view that wherever goods vehicles are allowed entry, the workers engaged in loading, unloading and the crew also have access. In this case the person involved is a headload worker and obviously he has a right of access to the place for his work, though he is not a crew member or a regular employee of the vehicle. While this is a case of truck allowed inside the house compound where construction was carrying on, for the purpose of unloading of goods, several godowns provide access to goods vehicles and headload workers so that loading and unloading from vehicles are done in the godowns. Obviously construction sites, godowns etc. are not places where public have uncontrolled right of access. However, access is provided to employees, crew members of goods vehicles, loading-unloading workers etc. for the purpose of carrying out their work involving use of the vehicle. Unless places like this where restricted entry is permitted to specified class of people for the

purpose of handling goods in the form of loading and unloading of goods are treated as public places, the very purpose of insurance coverage under S. 147 of the Act will be defeated. It is clear from S. 147 that liability under the policy is not restricted for accident taking place on public roads. On the other hand, instead of using public road, the coverage under the policy is for accidents taking place in public place which in our view, has a wide meaning covering private places of the kind referred above where restricted access is provided to limited class of public which can be even for specific purposes. We, therefore, hold that the private premises of a house where goods vehicle is allowed entry, is a public place for the purpose of S. 2(34) of the Motor Vehicles Act which leads to liability for the Insurance Company subject to satisfying other conditions of the policy."

20. Significantly, their Lordships held that the private premises of a house where goods vehicle is allowed entry, is a public place for the purpose of Section 2(34) of the Motor Vehicles Act which leads to liability for the Insurance Company subject to satisfying other conditions of the policy.

21. We will now examine the dictum laid down in the various decisions referred by the learned counsel for the Insurance Company.

22. The first of the decisions relied upon is Taxi Drivers' Union and Another Vs. Kerala State Road Transport Corporation and Others, AIR 1983 Ker 69 . There the question considered was whether the road connecting National Highway and Cochin Aerodrome building and park area is a public place. Going by the facts of the said case, it can be seen that permission was given for transporting vehicles to that area. Ultimately the view taken is that since public have no right of access as a matter of right, but have access only by way of permission, the link road and parking are not "public places" as defined in the Act.

23. In fact the Division Bench in Alias Vs. Paul, (2003) 3 ACC 377 : (2004) ACJ 158 : AIR 2004 Ker 214 : (2003) 3 ILR (Ker) 552 : (2003) 2 KLT 992 in paragraph 4 has distinguished the said decision in the light of the fact that permission was required for transport vehicles to use that area. Herein such a condition being not there, according to us, the decision in Taxi Drivers' Union and Another Vs. Kerala State Road Transport Corporation and Others, AIR 1983 Ker 69 cannot help to advance the arguments of the learned counsel for the Insurance Company.

24. The next decision is Mangalamma and Others Vs. Express Newspapers Ltd. and Another, AIR 1982 Mad 223 : (1982) ILR (Mad) 245 : (1982) 95 LW 51 : (1982) 1 MLJ 149 . There the accident occurred in Express Newspapers estate and the Division Bench was of the view that it had occurred totally in a private place and therefore the Insurance Company was not liable. In paragraph 9, the said view has been taken. Their Lordships laid emphasis to the word "right of access". On the special facts and circumstances of the case, it was held that Express estate has a compound wall all around and a gate at the entrance of the premises and there was a watchman at the inner gate and another watchman at

the outer gate. The evidence of the driver of the bus was also considered by the Division Bench, who has deposed that the accident occurred inside the compound of the Indian Express estate. Finally it was concluded that the Indian Express estate is a private place.

25. The next decision is by a learned Single Judge of the Madras High Court in *Rajammal Vs. Associated Transport Company and Another*, (1969) 82 LW 575 : (1969) 2 MLJ 620 . The meaning of the term "public place" under the Motor Vehicles Act 1939 was considered. It was held that in the light of the definition under Section 2(24), the criterion is whether the public have a right of access to the place and it will not be a public place merely, if as a matter of fact, the public have access. On the evidence it was found that the public have no right to enter the premises where the accident occurred.

26. In the light of the principles stated in the decisions relied upon by the learned counsel for the appellants, we find it unable to agree with the view taken by the last of the two decisions relied upon by the learned counsel for the Insurance Company namely *Mangalamma and Others Vs. Express Newspapers Ltd. and Another*, AIR 1982 Mad 223 : (1982) ILR (Mad) 245 : (1982) 95 LW 51 : (1982) 1 MLJ 149 and *Rajammal Vs. Associated Transport Company and Another*, (1969) 82 LW 575 : (1969) 2 MLJ 620 . Those decisions turned on the factual position available.

27. As far as the provisions under the Motor Vehicles Act, 1988 are concerned, we are of the view that the statute is framed with the anxiety and the purpose to compensate the victims of accidents which may occur in different circumstances. According to us, while considering the meaning of the term public place, a literal interpretation will lead to anomalous results and will defeat the purpose. A purposive interpretation thus will have to be adopted. It is a matter of common knowledge that in view of the increased spheres of activities in daily life of people, the necessity to hire goods vehicles either to transport household articles or the articles for use, merchandise, sand, cement etc. as well as agricultural crops arise of and on. The purpose of a goods vehicle will be to transport various items of goods. If the words "public place" are interpreted in such a manner that the place where accident occurred should be one where the place itself is dedicated for the use of the public, it will go against the purpose of the provision. The definition clause under Section 2(34) does not go to that extent. In our view the decision of the Division Bench in *United India Insurance Company Ltd. v. Lakshmi* (1997(1) KLT 449), which was relied upon in *United India Insurance Co. Ltd. Vs. Pierce Leslie India Ltd. and Others*, (2000) 2 ACC 146 : (2000) ACJ 1227 : (2000) 2 ILR (Ker) 365 clearly went to the extent of holding that a place will be a public place though it is a private property when it is shown that the public are in the habit of resorting to it and no one is prevented therefrom so resorting to it.

28. The idea given by the dictum laid down therein will promote the object of the statute and if we adopt a narrow interpretation it will defeat the intent and

purport of the statute also. According to us the Division Bench in *United India Insurance Co. Ltd. Vs. Pierce Leslie India Ltd. and Others*, (2000) 2 ACC 146 : (2000) ACJ 1227 : (2000) 2 ILR (Ker) 365 has expressed in clear terms that the private premises or houses also could be termed as a public place, where it is shown that public are in the habit of resorting to it. It could not be taken that the travel of goods vehicles can only be through the national highways or PWD roads or such other public roads. Herein also, going by the evidence the vehicle was actually heavily loaded with bundles of paddy crops. Evidently after it was loaded from the paddy fields it was being taken through public way which was situated nearby going by the mahazar, for unloading in the courtyard, made ready for stocking it. The vehicle had access to the place as held in *Rajan's case* (supra) which is sufficient.

29. It is the vehement argument of the learned counsel for the Insurance Company that the well was situated near the court yard and therefore by no stretch of imagination, it could be termed as a public place. Herein we rely upon the evidence of P.W. 1 to whom suggestions were made in the cross examination. He had explained the way in which the vehicle was taken and also about the location of the well and other factors. According to the learned counsel for the Insurance company since the deceased was standing near the well, which is located in a compound, the company will not be liable. What is important is the situation under which the vehicle was used and it cannot be disputed that the accident occurred because of the use of the vehicle in that place and as the vehicle had access to the place. Evidently, nobody is prevented from resorting to that place. If that be so, according to us, the contention raised by the learned counsel for the Insurance Company cannot be accepted.

30. The Tribunal was of the view that the compound being a residential compound of the party concerned, it will not be a public place. According to us, the above view runs counter to the dictum laid down in the various decisions of this Court which we have referred above. Therefore we reverse the same and hold that the accident had occurred in a public place and therefore the Insurance Company will be liable.

31. The next aspect is regarding the compensation assessed by the Tribunal. As regards the method adopted by the Tribunal, the learned counsel for the appellants submitted that the deceased had a permanent job under the Government Irrigation Department. He was aged 51 at the time of the accident. The Tribunal for the purpose of calculating the compensation assessed the monthly salary as Rs. 6626/- as reflected in Ext. A8. After deducting 1/3 for the personal expenses of the deceased, the balance amount was reckoned. The multiplier adopted is 13. Going by the judgment of the Apex Court 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 multiplier will be only 11 since the

deceased was aged 51 and retirement age during that period was 55. He had four years of remaining service. The Tribunal actually calculated the period of balance service as six years which may not be the correct one. The Tribunal reckoned the salary upto that period and for the remaining period monthly pension is reckoned as Rs. 1500/-. The learned counsel submits that the same is not the correct method. We are also of the view that going by the pension scheme for Government employees, 50% of salary can be assessed as the monthly pension. Therefore, the total compensation towards loss of dependency will have to be calculated accordingly. The calculation is the following:

32. As regards the amount awarded under other heads are concerned, the amount awarded towards loss of consortium, funeral expenses, loss of love and affection and loss of estate require proper enhancement. He was in the hospital for a period of four days and therefore we award a sum of Rs. 15,000/- towards pain and suffering. We also award Rs. 1,00,000/- towards loss of consortium and Rs. 1,00,000/- for loss of love and affection and towards loss of estate, we award Rs. 50,000/-.

33. Accordingly, the total compensation is refixed as follows:

34. The enhanced compensation will carry interest @ 9% per annum. We hold that the liability to meet the award is on the Insurance Company and there will be a direction to the Insurance Company to deposit the amount with interest within a period of three months and the amount will be shared in the ratio as provided by the Tribunal.

Accordingly, both the appeals are allowed and the parties will suffer their costs in the appeals.