

(1991) 04 KL CK 0023

In the High Court Of Kerala

Case No : M.F.A. No. 403 of 1986 and 381 of 1987

Saraskshy and Others

APPELLANT

Vs

Krishnankutty and Others

RESPONDENT

Date of Decision : 12-04-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1992) 1 ACC 432 : (1991) ACJ 1069

Hon'ble Judges : U.L. Bhat, J;K.K. Usha, J

Bench : Division Bench

Advocate : S. James Vincent, for the Appellant; S. Gopakumaran Nair, Sunny Varghese, K.V. Sukumaran Nayar and B.S. Krishnan, for the Respondent

Judgement

U.L. Bhat, J.—The appellants in M.F.A No. 403 of 1986, who were petitioners before the Motor Accidents Claims Tribunal, challenge the quantum of compensation granted to them, by seeking enhancement, whereas the appellant in M.F.A No. 381 of 1987, the insurance company, challenges the very jurisdiction of the Tribunal to entertain the claim petition filed by the appellants in M.F.A. No. 403 of 1986.

2. The appellants in M.F.A No. 403 of 1986 are the widow and children of Velayudhan Nadar, who died as a result of severe burns sustained by him in an accident. The deceased was an agriculturist and an independent contractor. He owned in front of his house, a double storeyed building. All the ten rooms in the building were rented out and one of the tenants was running a kerosene oil depot. On 17.12.1979, a tanker lorry belonging to the 1st respondent in M.F.A. No. 403 of 1986 brought kerosene to the above depot by about 8 p.m. It is the case of the appellants that deceased Velayudhan Nadar was used to be employed for transferring the kerosene from the tanker lorry to the barrels kept in the depot along with the regular employees in the tanker lorry, namely, respondent Nos. 2,4 and 5 in M.F.A. No. 403 of 1986. It is said that the skilled portion of the work, namely, opening the tanker, connecting the barrels etc., was being done

always by the regular employees and the deceased joined them to complete the remaining work. On 17.12.1979, while the deceased was thus engaged in filling the empty barrels with kerosene brought in the tanker lorry, due to no fault of his, a spark appeared from under the tanker and immediately the kerosene caught fire. As a result, the oil tanker, the oil depot, the entire building and about 20 coconut trees standing in the property belonging to the deceased, gutted in the fire. The deceased, in spite of his desperate attempt, could not save himself from the fire. He sustained severe burn injuries and was hospitalised in the Government Taluk Hospital, Neyyattinkara and then transferred to Medical College, Thiruvananthapuram. He succumbed to the injuries at 10 p.m. on 19.12.1979.

3. It is the case of the appellants in M.F.A. No. 403 of 1986 that the accident happened due to the negligence of the owner of the oil tanker and his employees. They claimed Rs. 1,51,000/- as compensation for loss of property and loss on account of the death of Velayudhan Nadar. Respondent Nos. 1 and 3 in M.F.A. No. 403 of 1986 contended before the Tribunal that the petition was not maintainable as the accident was not a motor vehicle accident and the Tribunal had no jurisdiction to entertain the claim. It was further contended by the 1st respondent that deceased Velayudhan Nadar was never engaged by the first respondent for decanting kerosene from the oil tanker to the barrels, that the deceased sustained the injury due to gross negligence on his part and that the amount claimed was exorbitant.

4. The Tribunal, by a preliminary order dated 17.12.1985, found that the deceased sustained the injuries as a consequence of an accident arising out of the use of the motor vehicle and therefore the petition for compensation u/s 110-A of the Motor Vehicles Act was maintainable before the Tribunal. After considering the entire evidence in the case, the Tribunal came to the conclusion that the accident was due to the negligence of the owner and driver of the tanker lorry and an award was passed in favour of the claimants to the extent of Rs. 67,350/-.

5. The contention taken by the insurance company in M.F.A. No. 381 of 1987 is against the finding of the Tribunal on the question of jurisdiction. It contends that since the vehicle was stationary at the time of accident, it cannot be said that the accident occurred by the use of the vehicle and therefore it is not liable to pay any amount. According to the appellant, the accident can be treated only as one arising out of and in the course of employment and not as a result of any motor vehicle accident for which the insurance company could be made liable. The claimants who are respondent Nos. 1 to 4 in M.F.A. No. 381 of 1987, on the other hand, contended that the accident involving death of Velayudhan Nadar and damage to the properties arose out of the use of motor vehicle and therefore directly coming u/s 110-A.

6. Certain facts are admitted by both sides in this case. The vehicle involved was one adapted to carry kerosene and it was being used for the purpose of

transporting kerosene. On the fatal day also, the vehicle was used for the above purpose. The accident occurred at the time when kerosene was being transferred from the vehicle to the barrels kept in the depot to which kerosene was being transported in the tanker lorry. Sub-section (1) of Section 110 empowers the State Government to constitute Motor Accidents Claims Tribunals 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 damage to any property of a third party so arising or both. Applications contemplated u/s 110-A are for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110. The question whether an accident occurring not due to the actual movement of the vehicle can be treated as one arising out of the use of the motor vehicle, had been the subject-matter of earlier decisions.

7. A Division Bench of this court had occasion to consider this question in *Padmanabhan Nair v. Narayanikutty* 1988 ACJ 58(Kerala). It was a case where a can of petrol kept under the seat of a bus caught fire from a beedi thrown by a passenger causing the death of another passenger by severe burns. Number of cases were referred and discussed in the above decision and their Lordships came to the conclusion that the word "use" is used in the Section in a very 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. Therefore, wherever 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. We are in respectful agreement with the above view taken by the Division Bench.

8. The respondents' counsel referred to a number of decisions in support of his contention. In *Government Insurance Office of New South Wales v. R.J. Green & Lloyd Pty. Limited* 1967 ACJ 329(HC, Australia), the question that arose was whether an injury sustained by a workman by the falling of a hoist upon him which was attached to a truck used for elevating material in the course of building construction was caused by the use of the vehicle. Their Lordships of the High Court of Australia held that the words "use of the motor vehicle" cover a very wide field, a field more extensive than what might be called the traffic use of the motor vehicle. The only limitation is that the injury must be in some way, a consequence of a use of a vehicle as a motor vehicle.

9. In *Oriental Fire & General Ins. Co. Ltd. v. Suman Navnath Raj guru* 1985 ACJ 243(Bombay), a petroleum tanker parked near the footpath exploded causing the death of a pedestrian. A Division Bench of the Bombay High Court held that the death was caused by an accident arising out of the use of the vehicle. In a case where a person who was assisting in filling the tank of a tractor with diesel, died of burns when the diesel caught fire from the lighted match shown near the mouth of the tank, it was held by a Division Bench of the Karnataka High Court

in *Malkamma v. Subhashchandra Reddy* (1986) 59 Comp Cas 509 ker, that the accident arose out of the use of a vehicle.

10. We are in agreement with the views expressed in the above decisions that a wider meaning has to be given to the words "arising out of the use of the motor vehicle", while considering Sections 110 and 110-A of the Motor Vehicles Act. In this case, vehicle was adapted for carrying oil and was being used for transporting kerosene to the depot. The accident occurred while it was being put to the above use. Therefore, we have no hesitation to hold that the accident which caused the death of Velayudhan Nadar arose out of the use of a motor vehicle and the Motor Accidents Claims Tribunal has jurisdiction to entertain the claim petition filed by his widow and children.

11. In M.F.A. No. 403 of 1986 filed by the widow and children of deceased Velayudhan Nadar, it is contended that the amount of compensation awarded by the Tribunal is much less than what is legally due to them. The appellants allege that they had claimed a total compensation of Rs. 1,51,000/- and not Rs. 1,00,000/- as found by the Tribunal, since they had amended the claim and paid additional court fee on 16.11.1985.

12. The Tribunal had allowed the claims made by the appellants towards transport to hospital, damage to clothing, funeral expenses and treatment in full and towards compensation of damage caused to the building, the Tribunal has granted Rs. 41,850/-.

13. The complaint of the appellants is directed against the grant of Rs. 6,000/- towards damage caused to the trees. The Tribunal has stated that their claim on this count was for Rs. 6,000/-, which was not controverted by the respondents. A reading of the claim petition would show that they had claimed Rs. 60,000/- towards compensation for the destruction of 20 coconut trees. The above claim was not specifically denied in the written statements of the respondents. Even then, we are of the view that the claim of Rs. 60,000/- is on the higher side. There is no evidence adduced regarding the age and yield of the coconut trees. We therefore feel, if the average yearly income taken as Rs. 50/- per tree, after deducting all the expenses, the annual loss would be Rs. 1,000/-. Fifteen times capitalised amount of loss would be Rs. 15,000/- as compensation for loss of 20 coconut trees.

14. The appellants had claimed Rs. 50,000/- as compensation for the death of Velayudhan Nadar. The Tribunal, after accepting the statement in the petition regarding the earnings of the deceased, by way of wages at the rate of Rs. 300/- deducted 1/4th for his expenses and another 1/4th for his savings. Since the deceased was aged 55 at the time of the accident, multiple of 10 was adopted and loss of dependency was calculated as Rs. 18,000/-. After deducting 1/4th for uncertainties in life, balance of Rs. 13,500/- was awarded. The appellants' contention that Rs. 36,000/- should have been granted under this head cannot be accepted in the facts and circumstances of the case. We feel that the amount

arrived at by the Tribunal is correct.

15. But the appellants have yet another claim on the ground of loss of estate of the deceased. According to them, Rs. 9,000/- earmarked for 10 years" saving would enure to the benefit of the estate of the deceased and that should have been taken into consideration for granting compensation. The following decisions are relied on to substantiate the above contention. *N. Sivammal v. M.D., Pandian Roadways Corporation* 1985 ACJ 75 (SC), *P. Pappammal v. International Space Research Organisation* 1986 ACJ 812 (Kerala), *Kerala State Road Transport Corporation v. Padmanabhan Nair* ILR 1990 Ker 822. In the Supreme Court decision, after calculating the compensation on the ground of loss of income, their Lordships directed addition of Rs. 5,000/- as a customary figure as loss to the estate. This decision was followed in later Kerala decisions referred above. Accepting the above principle, we hold that the appellants are entitled to Rs. 5,000/- on the ground of loss to the estate.

16. Relying on the decision of a Division Bench of this court reported in *Kerala State Road Trans. Corpn. Vs. P.J. John and Others*, the appellants contended that an amount of Rs. 5,000/- is liable to be granted for loss of expectation of life of deceased. According to the appellants, they are entitled to an amount of Rs. 5,000/- towards the pain and suffering of the deceased. In the decision reported in *N. Sivammal v. M.D., Pandian Roadways Corporation* 1985 ACJ 75 (SC), their Lordships granted an amount of Rs. 5,000/- on the above ground even though the claim made was under the head of mental agony suffered by the claimants as a result of the death of the deceased. The deceased who suffered severe burn injury on 17.12.1979 was first taken to Government Taluk Hospital, Neyyattinkara and to the Medical College Hospital, Thiruvananthapuram on 19.12.1979. He died at about 10 p.m. on that day. It is alleged that he had to endure great pain and suffering. Considering the fact that he was 55 at the time of death and that he was alive only for less than two days after the accident, a total amount of Rs. 5,000/- can be granted under both the heads of loss of expectation of life and pain and suffering of the deceased together. We order accordingly. The Tribunal has awarded Rs. 5,000/- as compensation for the loss of consortium to the wife and love, affection, protection and guidance to the children. This grant is not disturbed.

In the result, the award in O.P. (M.V.) No. 763 of 1980 is modified by enhancing the compensation from Rs. 67,350/- to Rs. 85,350/-. The direction by the Tribunal regarding interest and costs shall stand. M.F.A. No. 403 of 1986 is partly allowed to the above extent and M.F.A. No. 381 of 1987 stands dismissed.