

(2021) 11 KL CK 0075
In the High Court Of Kerala
Case No : MACA NO. 202 Of 2013

Sosamma Abraham

APPELLANT

Vs

Santhosh.G

RESPONDENT

Date of Decision : 11-11-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(34), 147

Citation : (2021) 11 KL CK 0075

Hon'ble Judges : A. Badharudeen, J.

Bench : Single Bench

Advocate : Vinoy Varghese Kallumootill, M.Rajagopalan

Final Decision : Partly Allowed

Judgement

A. Badharudeen, J

1. Appellants are additional petitioners 2 to 5 being legal heirs of Abraham Kuruvila, the original petitioner in O.P(MV).No.1822/2004. They are aggrieved by award dated 17.12.2011 passed by the Motor Accident Claims Tribunal, Pathanamthitta. Respondents 1 to 3 are arrayed as respondents herein.

2. Brief facts:

Petitioner was a 54 year old coolie worker at the time of the accident. On 29.11.2003 at about 10.30 a.m while the petitioner was doing loading and unloading work in the property of Puranthadayil Kunjumol at Niranam Central keeping his right hand on the left side body of a lorry bearing Reg.No.KI-4/B 6453, another lorry bearing Reg.No.KL-7/B 6782 named "Puthenpurakal", driven by the 1st respondent crushed his right hand pressing hard on the other lorry. Both vehicles came there for unloading building materials. As a result of the accident, the petitioner sustained serious injuries on his right hand. The accident occurred solely due to the negligence of the driver of the lorry bearing Reg.No.KL-7/B 6782, ie., the 1st respondent, according to the additional petitioners. The 2nd respondent is the owner of the offending vehicle and 3rd

respondent is the insurer. Hence all the respondents are jointly and severally liable to compensate the petitioner. The petitioner claimed Rs.1 lakh as compensation.

3. Respondents 1 and 2 were set *exparte* by the Tribunal. The 3rd respondent insurance company filed written statement and resisted the petition after admitting policy. Liability was disputed on the ground of violation of policy conditions alleging that the place of accident is not a public place as defined in the Motor Vehicles Act.

4. The Tribunal marked Exts.A1 to A10 series on the part of the appellants and finally granted award to the tune of Rs.56,020/- as against claim of Rs.1 lakh.

5. The learned Tribunal found that the 3rd respondent is not bound to indemnify the insured since the accident occurred not in a public place, as defined in the Motor Vehicles Act.

6. The learned counsel for the appellants would point out that the finding of the Tribunal in issue No.3 to the effect that the 3rd respondent has no liability to indemnify the insured is an erroneous finding and the same requires reconsideration to fasten liability upon the insurance company. In this regard, the learned counsel for the appellants placed a decision reported in [2009(1) KLT 573], *Rajan v. John* and zealously urged that the term 'public place' as defined under Section 2(34) of the M.V Act, 1988, has to be understood with reference to the places to which a vehicle has access.

7. Thus the relevant question to be answered is whether a private premises is to be held as public place for the purpose of S.2(34) of the Motor Vehicles Act?

8. In the *Rajan's* case (*supra*), the Division Bench of this Court considered two question while dealing with claim raised by an injured when he sustained injuries while unloading marble in the house premises of a person, who purchased and transported marble to his house in the same truck and held as under:

"In one case this court held that when entry of transport vehicle is permitted in factory premises, such premises constitute a "public place" for the purpose of liability for compensation payable by the Insurance Company under S.147 of the Motor Vehicles Act. Similarly, in the other two cases this court held that road leading to a stone quarry and workshop premises can be treated as public place for the purpose of S.2(34) of the Motor Vehicles Act. S.2(34) of the Motor Vehicles Act defines public place 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". From the above we are of the view that public place does not have a restricted meaning inasmuch 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."

9. Subsequently in another decision reported in [2015 KHC 3701], Parukutty and Ors. v. K.P Joseph & Ors. another Division Bench followed the ratio in Rajan's case (supra) and it was held that while considering the meaning of the term 'public place' a literal interpretation would lead to anomalous results and would defeat the purpose. A purposive interpretation thus would have to be adopted. It was held further 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. If the words 'public place' are interpreted in such a manner that the place where the accident occurred should be one where the place itself is dedicated for the use of the public, it would go against the purpose of the provision. In the decision reported in [2019 KHC 5330], Hasna.S.K v. S.K.Haridas & Ors., a Division Bench of this Court also followed the same ratio.

10. This legal position is not disputed by the learned counsel for the insurance company also in view of the binding precedents.

11. Thus it has to be held that when an accident occurred in the private premises of a house or any other building or places, where access to vehicles is possible and accident happens by use of the Motor Vehicles in that place, such place also should be read as public place for the purpose of Section 2(34) of the M.V Act while deciding liability under Section 147 of the M.V Act. In the case on hand, the petitioner was standing in the property of a private person while engaging loading and unloading articles from the offending vehicle. No doubt such a place is one where vehicles have access and a public place as envisaged under Section 2(34) of the M.V Act. If so, the Tribunal went wrong in holding that the insurer is not bound to indemnify the insured holding otherwise. Therefore, the said finding is interfered and set aside.

12. To be on the quantum fixed by the Tribunal also, the learned counsel for the appellants raised challenge on the ground of inadequacy. According to the learned counsel for the appellants, the insured claimed Rs.5,000/- as monthly income being a coolie worker where he sustained injuries on 29.11.2003 due to negligent driving of the 1st respondent. Following the ratio in 2011 (13) SCC 236], Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd., where Rs.4,500/- was fixed as the income of a coolie worker during 2004, Rs.4,000/- per month can safely be fixed as the monthly income in this case of 2003 for the purpose of calculating loss of earnings and disability. The Tribunal granted Rs.9,000/- for 3 months as the loss of earnings in this case where the injured sustained crush injury right hand about 2X3 cms long on dorsum with tendon and bone involvement. Further the injured sustained comminuted fracture 2nd, 3rd and 4th metacarpal bones on right hand, as borne out from Ext.A6 wound certificate. Considering the injuries, grant of loss of earnings for a period of 3 months is not liable to be interfered as rightly pointed out by the learned counsel for the insurance company. However, loss of earnings required to be recalculated @ Rs.4,000/- per month. Therefore, Rs.3,000/- more is granted

under the head loss of earnings. Considering the injuries, Rs.10,000/- more is granted under the head pain and sufferings. Only Rs.2,000/- is granted under the head loss of amenities. In consideration of the injuries and treatment, Rs.13,000/- more is granted under the head loss of amenities.

13. Similarly, the learned counsel for the appellants canvassed increase in the matter of compensation for permanent disability also. It is pointed out that though the disability assessed as 18% was accepted by the Tribunal, the multiplier wrongly fixed as 4, instead of 11, available to the age group between 51-55 years. Therefore, this submission seems to be correct and therefore no serious challenge raised by the learned counsel for the insurance company also. Thus the disability income is calculated as under:

$4000 \times 12 \times 18 \times 11/100 = \text{Rs.}95,040/-$. The Tribunal granted Rs.25,920/-. Thus Rs.69,120/- more is granted under the head disability income.

14. In the result, the appeal is allowed in part. It is held that the appellants are entitled to get Rs.95,120/- (Rupees Ninety five thousand one hundred twenty only) as enhanced compensation and the award impugned is modified as above with the same rate of interest granted by the Tribunal from the date of petition till the date of deposit or realisation, excluding the period of 299 days in filing this appeal as ordered in the order dated 24.03.2021 in C.M.Appl.No.1 of 2013. The insurance company is directed to deposit the same in the name of the appellants within two months from today and the appellants are at liberty to release the same, on deposit.

The appellants paid Rs.373/- as court fee after valuing the claim at Rs.1 lakh. However, Rs.512/- (Rupees Five hundred and twelve only) is more payable as court fee for the enhanced sum of Rs.51,140/-, by the appellants. Hence insurer is directed to deposit Rs.512/- (Rupees Five hundred and twelve only), being the court fee payable in respect of enhanced compensation, in the name of MACT by a separate cheque.