

(1995) 07 KL CK 0043
In the High Court Of Kerala
Case No : C.M.A. No. 52 of 1994

Thomas

APPELLANT

Vs

Mathew N.M. and 2 Others

RESPONDENT

Date of Decision : 31-07-1995

Acts Referred:

Contract Act, 1872 — Section 43

Motor Vehicles Act, 1988 — Section 140, 140(1), 144, 166

Citation : (1995) 07 KL CK 0043

Hon'ble Judges : K.T. Thomas, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : C. Pius Kuriakose and C. Varghese Kuriakose, for the Appellant;
P.N.K. Achan (Sr. Advocate) and P.N. Ravindran for Respondent 3 and K.M.
Joseph as Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—A very peculiar situation has arisen in this case. When a claimant himself is equally answerable to "no fault liability" under Sec. 140 of the Motor Vehicles Act, 1988 (for short "the Act") along with another vehicle owner, can the former be given an award to realise compensation from the latter? The question was not easy to answer. Hence we requested Sri. K.M. Joseph, Advocate, to help us amicus curiae. We thank him for the services rendered. Before we proceed to the question we may decide the first issue whether claimant can get compensation de hors "no fault liability". The bare facts necessary to deal with the issue are the following ; Claimant was riding a motor cycle from north to south along the public road. A car driven by the first respondent (his wife is the registered owner of the car) was proceeding from the opposite direction. Both the vehicles collided with each other at the accident spot. Appellant fell down and sustained some injuries including fracture of the bones on the left leg. He filed the claim against the first respondent, his wife and the insurer for over a lakh of rupees as compensation.

2. Appellant alleged that the accident was the consequence of first respondent's negligence in driving the car. Respondents on the other hand contended that the car was driven through its proper side and the collision took place on account of claimant's negligence in riding the two wheeler.

3. The Motor Accidents Claims. Tribunal (for short "the Claims Tribunal") found that the accident occurred due to the negligence of the claimant. Claim was accordingly dismissed in toto. However, Claims Tribunal made an assessment of the compensation which claimant could have been awarded had the claim been sustainable. This appeal is by the claimant in challenge of the said award.

4. We have perused the evidence. There is no dispute that the vehicles were found on the western portion of the road soon after the accident. When two vehicles driven from opposite directions collided with each other the spot of occurrence would provide a safe clue for fixing up the factum of negligence. If the collision took place on the side of the road that fact would afford sufficient guidance to infer that the driver of the vehicle which was on the wrong side of the road would have been negligent. Of course, this is only rebuttable presumption. So upon establishment of that fact the rule of *res ipsa loquitur* can be followed i.e., "the thing speaks for itself". This is only a rule of evidence which enables the court to determine the burden of proof in certain cases.

5. The leading case on the rule of *res ipsa loquitur* is *Scott v. London and St. Katherine Docks Co.* (1865) 3 H & C 596] Erie C.J., who laid down the rule, has observed in it that where the thing is shown to be under the management of one person and the accident is such as in the ordinary course of things does not happen the thing would afford reasonable evidence that the accident arose from want of care of that person, unless he can explain otherwise. *Evershed M.R.* followed and affirmed the above principle in *Moore v. R. Fox & Sons* (1956) I.Q. 596). The said principle had been profitably adopted in India also. (*Vide Syad Akbar v. State* [AIR 1979 S. 1848]). A full Bench of this Court has reiterated it in *K.S.E.B. V. Kamalakshy Amma* (1986 KLT 1124)

6. To rebut the presumption envisaged in the rule of *res ipsa loquitur* learned counsel for the appellant contended that the vehicles collided with each other at the middle of the road and both moved to the western portion only due to the impact of the collision. This does not appear to be correct because appellant's witness (P.W.2) has said even in chief-examination that the car was driven along the western side of the road which means that the car driver was keeping its proper side.

7. From the above evidence a conclusion is inescapable that collision took place on account of one of the vehicles keeping wrong side. As the car was keeping its proper side the negligence can be fastened with the rider of the two wheeler.

8. Learned counsel for the appellant then adopted the alternative contention based on the statutory provision regarding no fault theory. Chapter X of the Motor Vehicles Act, 1988 deals with "Liability without Fault". Sec. 140 (1) reads

thus :

Liability to pay compensation in certain cases on the principle of no fault. - (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicle shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

It is clear from the provision that when more than one vehicle is involved in the accident then owners of both vehicles are "jointly and severally" liable to pay compensation in respect of the accident under the "no fault" principle. Subsection (3) absolves a claimant from the task of pleading and establishing that the accident was due to any wrongful act, negligence or default of the owner of the vehicle or vehicles concerned. Sub-section (4) forbids any party to resist the claim on the ground of wrongful act, negligence or default on the part of the other vehicle owner. Sec. 144 has subordinated the other provisions of law by placing no fault theory above them.

9. The person entitled to compensation under Sec. 140 of the Act has to make an application under Sec 166. But when the claimant himself has the liability co-extensive with the owner of the other vehicle, can a claim against the owner of the other vehicle be countenanced in law? In considering this question the following illustration would highlight the principle to be evolved e.g. If the accident was admittedly due to the negligence of the appellant alone and if the car owner is totally innocent of the occurrence, then to allow the faultier to collect large amount of his loss from the non-faulting party is seemingly, inconsistent with the principles of justice, equity and good conscience. Unless the law is clear as to clip such principles the same cannot be read into the provision. Here the statute has fixed the liability of the two owners as "joint and several". It normally means that both owners are independently and equally liable to the man who suffered. Joint and several liability is understood in law as an equal liability which does not telescope into each other. This liability is by and large to third parties and not against each other. In Mozley & Whiteley's Law Dictionary (Ninth Edition) the expression "joint and several" is sought to be delineated thus :

When two or more persons declare themselves jointly and severally bound, this means that they render themselves liable to a joint action against all, as well as to a separate action against each, in case the conditions of the bond or agreement be not complied with. And the party to whom they are so jointly and severally bound is called a joint and several creditor.

A person jointly liable with another has a right, in equity, to claim contribution from the other if the former had shouldered the burden when a third party has realised the amount from him. Such a right to contribution springs from equality of burden and benefit. This principle is given statutory recognition in Sec. 43 of the Indian Contract Act.

10. It was from the decision of the Supreme Court in *Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others*, that Parliament took the cue for incorporating the theory of no fault liability in the Motor Vehicles Act. Krishna Iyer, J., has observed in that decision thus :

Medieval roads with treacherous dangers and total disrepair, explosive increase of heavy vehicles often terrible overloaded and without cautionary signals, reckless drivers crazy with speed and tipsy with spirituous potions, non-enforcement of traffic regulations designed for safety but offering opportunities for systematised corruption and little else and, as a cumulative effect, mounting highway accidents, demand a new dimension to the law of torts through no fault liability and processual clarity and simplicity in compensation claims, cases.....The Jurisprudence of compensation for motor accidents must develop in the direction of non-fault liability and the determination of the quantum must be liberal not niggardly, since the law values life and limb in a free country in generous scales.

The Eighty-fifth Report of the Law Commission of India supplied emphasis to the said aspect and recommended for suitable amendments in the Motor Vehicles Act by incorporating "no fault liability" principle. No consideration was made in the said report for payment of money to the wrong doer who becomes the claimant himself. Fusion of the two characters into one person was not in the contemplation of the law makers. Thus, when a joint action is contemplated against owners of two vehicles involving one accident, the intention of the legislature was that such action must be by a third person and not one of the persons liable.

Hence in our view when the law declared that owners of both vehicles shall "jointly and severally" be liable, what is envisaged is the liability to third persons and not between themselves. According to us, the legislature has never contemplated the contingency where claimant himself is one of the persons liable to meet the claim.

We are therefore, not inclined to extend the benefit provided under Sec. 140 of the Act to the appellant in this case. Appeal is hence dismissed.