
(1988) 03 KL CK 0037
In the High Court Of Kerala

United India Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Varghese and Others	RESPONDENT

Date of Decision : 23-03-1988

Acts Referred:

Motor Vehicles Act, 1988 — Section 96(2)

Citation : (1989) 2 ACC 483 : (1989) ACJ 472

Hon'ble Judges : V. Sivaraman Nair, J;P.K. Shamsuddin, J

Bench : Division Bench

Judgement

V.V. Sivaraman Nair, J.—The insurer of a stage carriage KRE 8256 is the appellant. The 5th respondent, who was a passenger in a taxi jeep No. KLF 402 had sustained injuries in an accident involving that vehicle and stage carriage KRE 8256. The vehicles collided with each other at a place called Pandaran Valavu, near Onakur on Piravom-Muvattupuzha road at about 2.30 p.m. on 20-9-1979. The injured was taken to the Government Hospital, Piravom and thereafter to the Medical College Hospital, Kottayam. The injured had suffered a crush injury of the right foot with loss of terminal phalange of the big toe, fracture of the basal phalange of the 2nd toe, and fracture of the right clavicle. He was hospitalized in the Medical College Hospital from 20-9-1979. In his application u/s 110-A of the Motor Vehicles Act before the Motor Accidents claims Tribunal, Ernakulam, he claimed that the accident occurred due to the rashness and negligence of the driver of the stage carriage KRE 8256. He claimed an amount of Rs. 51,880/- as compensation under various heads. Respondent Nos. 1 to 3, the owner, driver and insurer of the passenger bus, resisted the claim stating that the accident occurred due to the negligence of the driver of the jeep KLF 402 and that the injured was liable to be compensated, if at all, only by him. The 3rd respondent contended further that the insurer of the jeep not having been impleaded in the claim petition, it was not maintainable. The 3rd respondent also contended that the insurer of the jeep had a statutory liability to pay Rs. 10,000/- as compensation and that in any case, no amount of compensation can be awarded against the insurer of the bus.

2. The Tribunal held that the accident occurred due to the negligence of the bus driver as also the jeep driver. He found further that the bus driver was more negligent, and that he was negligent to the extent of 75 per cent and the jeep driver was negligent to the extent of 25 per cent. He held that the accident occurred due to the composite negligence. Even though the injured claimed an amount of Rs. 51,880/- as compensation, he had limited his claim to Rs. 30,000/-. The Tribunal found that he was not entitled to any compensation for loss of earning capacity. It, however, awarded Rs. 5,000/- as compensation for pain and suffering, 5,000/- for disability in walking, Rs. 3,000/- for loss of earnings, and Rs. 2,000/- for medical expenses, thus aggregating an amount of Rs. 15,000/-. Since the injured had not sought any relief against the owner, and driver of the jeep, the Tribunal held that in view of the fact that the liability of the respondents was joint and several, each one was liable to pay the full compensation. The injured had not claimed any relief against the owner and driver of the jeep. The entire liability was, therefore, cast upon respondent Nos. 1 and 2, and the insurer was directed to deposit the entire amount with interest at 6 per cent from 26-12-1980 till realisation. It is against that judgment and award of the Tribunal that the insurer of the stage carriage has come up in this appeal.

3. The main point which is urged by the appellant is that the Tribunal erred in law in awarding recovery of the entire amount of compensation from the insurer of the bus after finding that the driver of the jeep was negligent to the extent of 23 per cent. Counsel also submitted that in a case of composite negligence, the Tribunal could not have awarded any compensation at all unless all the joint tortfeasors were parties to the proceedings. The appellant therefore prayed that the appeal may be allowed restricting his liability of 75 per cent of the amount of compensation awarded by the Tribunal.

4. Respondent Nos. 3 and 4, the owner and driver of the jeep, have filed a cross-objection. They maintain that the insurer is limited to the defences available u/s 96(2) of the Motor Vehicles Act in an appeal from an award of the Accidents claims Tribunal as much as it is restricted to such defences before the Tribunal. They assert that the insurer was not entitled to take any of the defences which the owner or driver of the bus could have taken in the absence of such a condition in the policy of insurance, or any plea that there was collusion between the claimant and the owner and the Tribunal had given permission u/s 110-C(2) of the Motor Vehicles Act.

5. Even though the insurer has sought to assail the findings of the Tribunal in respect of the extent of negligence, the amount of compensation, etc, counsel rightly resisted from pressing those grounds before us. It was obviously because this Court has held in *The New India Assurance Company Ltd. Vs. O.V. Radhakrishnan and Others* that the insurer is limited to the defences u/s 96(2) of the Motor Vehicles Act both before the Tribunal and in appeal before this Court. The only point which he urged with considerable emphasis was that the insurer

of the jeep must have been a party to the proceedings and relief should have been sought by the injured and granted by the Tribunal against all the joint tortfeasors and not against a few among them.

6. In a case of composite negligence, the injured has the option to proceed against all or any one of the joint tortfeasors. He can therefore enforce his claim for compensation impleading only one of the joint tortfeasors. It cannot be a defence, in such an action, for the defendant to contend that the other joint tortfeasors have not been made parties and therefore the action is not sustainable. He may have the right to seek contribution from the other joint tortfeasors for any amount, which he pays in excess of his liability. The liability of the joint tortfeasors being joint and several, the action against one of the many cannot be effectively resisted as unsustainable. The injured may sue against all or any of the negligent persons. It is not the concern of his whether there is any duty of contribution or indemnity as between those persons though he may not be able to recover, on the whole, more than his own damage by successive actions against different tortfeasors. The principle is well settled that "if one of the number of joint tortfeasors or of several tortfeasors causing the same damage is alone sued, he is liable for the whole damage, though he did but a small part of it." The recovery of damages against one of a number of tortfeasors may operate as a bar to any further action against the others even if the judgment remained unsatisfied.

7. In this view, the relief which is sought in this appeal cannot be granted. It may look that in spite of a finding that the driver of the bus was negligent only to the extent of 75 per cent, his insurer shall pay the entire compensation in view of the stratagem adopted by the injured in not claiming any relief against the owner and driver of the jeep and consequently, against the insurer of that vehicle. But his stratagem is one sanctioned by law. There are many oddities in law, and this may be one such.

8. The cross-objection filed by respondent Nos. 3 and 4, the owner and driver of the jeep, has no merit in view of the above finding. The claimant has not filed any cross-objection.

9. In the result, the appeal and the cross-objection are dismissed. The parties will suffer their respective costs.