
(1997) 02 KL CK 0035
In the High Court Of Kerala
Case No : M.F.A. No. 434 of 1988

United India Insurance Co. Ltd.

APPELLANT

Vs

Lakshmi

RESPONDENT

Date of Decision : 04-02-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (1997) 3 ILR (Ker) 354 : (1997) 2 RCR(Civil) 529

Hon'ble Judges : P.A. Mohammed, J;D. Sreedevi, J

Bench : Division Bench

Advocate : K.P. Vijayan, for the Appellant; Johnson Manayani, George Kuruvila, P. Vijayabhanu and Varkey J. Kappen, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Mohammed, J.—The subject-matter of this appeal is a claim arising out of a motor accident. In the accident which took place on 5.9.1980 the husband of respondent No. 1, Krishnan, sustained grievous injuries and later he succumbed to his injuries at the District Hospital, Trichur, on 15.10.1980. The vehicle involved in the accident was a motor tractor KLM 1776 which was insured with the appellant, the United India Insurance Co. Ltd. The liability of the insurer is unlimited. The wife and children of deceased Krishnan filed petition under Sections 92-A and 110-A of the Motor Vehicles Act claiming compensation of Rs. 1,00,000/-. The Tribunal after holding enquiry awarded a sum of Rs. 77,000/- as compensation. The liability to pay compensation was fixed with the appellant. The insurer being dissatisfied with the fixation of the liability has filed this appeal against the award in M.V.O.P. No. 260 of 1986 of the Motor Accidents Claims Tribunal, Manjeri.

2. After holding enquiry, the Tribunal found that the accident was caused due to rash and negligent driving of respondent No. 9. That question is not disputed in this appeal.

3. A cross-objection has been filed on behalf of respondent No. 8, who is the owner of the vehicle. Since the appeal has been filed by the insurer, cross-objection filed by the owner of the vehicle is not maintainable in view of the decision of a Division Bench of this Court in *New India Assurance Co. Ltd. Vs. Peelari Edathil Kunhiraman Nambiar and Others*, . The Division Bench rejected the prayer of the claimant therein to reconsider the decision in *United India Insurance Co. Ltd. Vs. Smt. O. Jameela Beevi and Others*, . We do not see any reason to say otherwise.

4. The main point urged by the counsel for the insurer relates to the identity of the vehicle involved in the accident. The case of the claimant is that while deceased Krishnan was working in the paddy field he was knocked down by the tractor KLM 1776 belonging to the respondent No. 8 and he died after 40 days of the accident. The contesting respondents before the Tribunal filed separate written statements. The respondent No. 8 herein, the owner of the tractor, contended that his vehicle was not involved in the accident whereas the respondent No. 9 herein contended that he was not the driver of the tractor KLM 1776 owned by respondent No. 8 and he was the driver under one C.P. George. His further case is that the tractor involved in the accident was KLP 8690 and not KLM 1776. The tractor KLP 8690 belonged to C.P. George, according to him. The appellant, the insurer, initially contended that the accident occurred in a private paddy field and not in a "public place". It later filed an additional written statement on the basis of the contention raised by the driver that the motor tractor involved in the accident was not KLM 1776. Pursuant to the first information lodged by the owner of the paddy field, police charge-sheeted the respondent No. 2 in the petition before the Judicial First Class Magistrate, Ponnani, as C.C. No. 27 of 1981. Exh. A-3 is the said first information report and Exh. A-6 is the mahazar prepared by the police during the investigation.

5. The first point urged before us by the appellant is that the vehicle involved in the accident is not the tractor KLM 1776 and, therefore, the insurer is not liable to pay the compensation. In this context, the most relevant document available for consideration is Exh. A-6, mahazar, filed before the Magistrate's Court, Ponnani. That mahazar was prepared pursuant to the registration of the crime No. 93/80 by the Changaram-kulam Police Station, under Sections 279 and 304-A, Indian Penal Code. The Sub-Inspector attached to that police station inspected the vehicle KLM 1776 involved in the accident. He had noticed the above vehicle being halted in the compound of C.P. George. He had specifically noted down the number of the vehicle as KLM 1776 and its dismantled condition. According to us, Exh. A-6 is a sufficient answer for the question relating to the identity of the vehicle. The Tribunal after enquiry found that the vehicle involved in the accident was KLM 1776 and not KLP 8690. We have no material before us to say otherwise. Hence, the above finding of the Tribunal is confirmed.

6. The next point urged by the counsel for the appellant is that the accident in this case took place not in a "public place" but in a private property. The counsel

maintains that in order to attract the provision contained in Section 95 of the Motor Vehicles Act, 1939, the death or bodily injury to any person must have been caused by the use of the vehicle in a "public place". The term "public place" has been defined in Section 2 (24) of the Act 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.

What is required to be examined is whether the expression "public place" will cover all places including private properties where the members of public have an access. The examination of this question was found to be necessary since what is to be adjudicated is the rights of victims of motor accidents under Chapter VIII of the Act.

7. Barry, J. said in *R. v. Kane* (1965) 1 All ER 705:

I feel bound to direct you as a matter of law that there is no substantial difference between the meaning of "a public place" as defined by the statute and the meaning of "a public place" at common law. In substance, there is no difference between the two. At common law, "a public place" is a place to which the public can and do, have access. I direct you as a matter of law that it matters not whether they come to that place at the invitation of the occupier or whether they come to it merely with his permission; also that it matters not whether some payment, or indeed, the performance of some small formality such as the signing of a visitors' book, is required before they are allowed access.

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. In this context, it is apt to consider the decision of a Full Bench of the Bombay High Court in *Pandurang Chimaji Agale v. New India Life Insurance Co. Ltd.* 1988 ACJ 674 That was a case where the accident involved was on a private road in the compound of an industrial establishment where hundreds of visitors were regulated by passes. The Tribunal held that it is not a public place and the insurer is not liable to pay compensation. Reversing the decision of the Tribunal, the Full Bench held in para 14 of the judgment thus:

The survey of the aforesaid decisions shows that the courts are not unanimous and there is a divergence of opinion with regard to the definition of "public place" in Section 2 (24) of the Act. For the reasons which we have discussed earlier, we prefer the view taken by the latter authorities and hold that at least for the purpose of Chapter VIII of the Act expression "public place" will cover all places including those of private ownership where members of public have an access whether free or controlled in any manner whatsoever.

We respectfully follow the above observation of the Full Bench of the Bombay High Court.

8. A Division Bench of this Court in *Chacko v. Mariakutty* 1987 ACJ 557 said:

To us, it appears that the public place is a place to which nobody can deny as a matter of right access to the others, or nobody had, as a matter of fact, at the relevant time, or immediately prior thereto, sought to exercise the right of denial of access to the others. It is significant that the definition of "public place" in Section 2 (24) of the Motor Vehicles Act mentions that, even if the place is not a thoroughfare, it may still be a public place, provided the public have got right of access thereto. Even though the Tribunal stated that access to the place of accident was restricted by licence, no evidence did, as a matter of fact, support this assumption.

This court has given a liberal interpretation to the expression "public place" as defined in Section 2 (24) of the Act. This is what is revealed from the above decision. There is nothing in evidence available in this case to the effect that there were restrictions or regulations on the exercise of right of access by the members of the public to the property in question. In the absence of such restriction or regulation, it cannot be said that the right of entry to the paddy field was restricted.

In view of what we have said above, the contentions urged on behalf of the appellant are liable to be rejected and we do so. The appeal is accordingly dismissed. No order as to costs.