

(2011) 06 KL CK 0058
In the High Court Of Kerala
Case No : M.A.C.A. No. 747 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

Thankamma and Others

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 173

Citation : (2012) ACJ 1512 : (2011) 3 KLJ 387 : (2011) 3 KLT 466 : (2011) 8 RCR(Civil) 1519 : (2011) 4 TAC 497

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : A.R. George, for the Appellant; Mathew Skaria, for the Respondent

Final Decision : Dismissed

Judgement

P.Q. Barkath Ali, J.—Short question which arises for consideration in this appeal u/s 173 of the Motor Vehicles Act is whether a murder committed in a motor vehicle can be termed as "an accident arising out of the use of the motor vehicle", as contemplated u/s 163A of the Motor Vehicles Act. Appellant is the second respondent Insurance Company in O.P.(MV) No. 515/2002 on the file of the Motor Accidents Claims Tribunal, Thodupuzha. In this appeal the appellant challenges the judgment and award of the Tribunal dated October 11, 2004 awarding a compensation of Rs. 2,80,000/- to the claimants who are the mother, brothers and sisters of deceased Vasudevan who died in a motor accident.

2. The accident happened on January 30,2000. While deceased Vasudevan was driving his jeep bearing registration No. KLL 4253 and reached at Kumbakkanam, one of the passengers of the jeep by name Sunny attacked him causing serious injuries to him. He succumbed to the injuries sustained while undergoing treatment in the hospital. The claimants filed the O.P. u/s 163A of the Motor Vehicles Act against the owner and the insurer of the jeep claiming a compensation of Rs. 4 lakhs, alleging that the accident occurred out of the user of the motor vehicle.

3. The first respondent, the owner of the offending jeep, remained absent before the Tribunal. The second respondent, the insurer of the offending jeep, filed a written statement admitting the policy, but contended that the murder of the deceased is not an accidental murder, that the same did not occur out of the user of the motor vehicle and that therefore the claimants are not entitled to any compensation.

4. Exts.A1 to A5 were marked on the side of the claimants. Ext.B1 was marked on the side of the contesting second respondent. On an appreciation of the evidence, the Tribunal found that the murder of the deceased by a co-passenger was an accident arising out of the user of the motor vehicle and awarded a compensation of Rs. 2,80,000/- with interest @ 6% per annum from the date of petition till realization. The second respondent, the insurer of the offending jeep, has come up in appeal challenging the above finding of the Tribunal and also the quantum of compensation awarded by the Tribunal.

5. Heard the learned counsel for the appellant Insurance Company and the learned counsel for the claimants.

6. The main point which arises for consideration is whether the murder of the deceased by a co-passenger can be termed as "an accident arising out of the use of the motor vehicle", as provided u/s 163A of the Motor Vehicles Act?

7. The learned counsel for the Insurance Company argued that intentional murder of the deceased by a co-passenger cannot be termed as "an accident arising out of the user of the motor vehicle", as contemplated u/s 163A of the Motor Vehicles Act.

8. Section 163A of the Motor Vehicles Act reads thus:-

163-A. Special provisions as to payment of compensation on structured formula basis--(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule, to the legal heirs or the victim, as the case maybe.

Explanation:- For the purpose of this sub- section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

9. A conjoint reading of the two sub-clauses of section 163A of the Motor

Vehicles Act shows that legal heirs or victim are entitled to claim compensation from owner/Insurance Company for death or permanent disablement suffered due to the accident arising out of the use of the motor vehicle, without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants, that death or disablement was caused due to an accident arising out of the use of the motor vehicle then they will be entitled for payment of compensation. Therefore, the point to be considered in this case is what is the actual legal impact of the words "death or disablement due to accident arising out of the use of the motor vehicle". In Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, the Apex Court held that if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder. The following decisions have been referred to in Rita Devi's case (Supra):- *Challis v. London & South Western Railway Company*, 1905(2) KB 154, *Nisbet v. Rayne & Burn*, (1910) 1 KB 689 and *Board of Management of Trim Joint District School v. Kelly*, 1914 AC 667. In Rita Devi's case (Supra) a driver of the auto-rickshaw was killed and vehicle was stolen by some person. The Apex Court held therein that it was an accidental murder arising out of the use of the vehicle and that the claimants were entitled to compensation from the owner and insurer of the offending auto-rickshaw. Applying the principles laid down in the above decision, in the facts of the present case it has to be held that the murder was not a pre-planned murder and that the same was only an accidental murder. Deceased Vasudevan was the driver of the vehicle in question. He stopped the vehicle due to mechanical defect and an altercation ensued between the deceased and Sunny and Sunny suddenly stabbed deceased Vasudevan. Thus it can be seen that Sunny had no intention to cause the death of Vasudevan. That being so, it has to be taken that it is an accidental murder and not an intentional one. It follows that the murder of the deceased Vasudevan was due to an accident arising out of the use of the vehicle. That being so, the Tribunal is rightly came to the conclusion that the claimants are entitled to compensation as claimed by them. No other point is argued before us. For the reasons stated above, we find no merit in this appeal and the same can be dismissed.

In the result, the appeal is dismissed.