
(2015) 04 KL CK 0034

In the High Court Of Kerala

Case No : M.A.C.A. Nos. 63 and 351 of 2013

Venugopala Panicker

APPELLANT

Vs

Unnikrishna Panicker and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 2 ILR Ker 779 : (2015) 2 KHC 621

Hon'ble Judges : P.N. Ravindran, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : Satheeshan Alakkadan and A. Arunkumar, for the Appellant

Judgement

Anil K. Narendran, J.—The appellant in M.A.C.A. No. 63 of 2013 is the petitioner in OP(MV). No. 647 of 2002 on the file of the Motor Accidents Claims Tribunal, Mavelikkara. Similarly, the appellant in M.A.C.A. No. 351 of 2013 is the petitioner in O.P.(MV) No. 645 of 2002 on the file of the said Tribunal. The case of the appellants was that on 11.6.2001, the appellants along with others sustained injuries in a road accident, while travelling in a Maruti car bearing registration No. KL-2/G-6800, from Alappuzha to Ernakulam, through the National Highway. When the car reached Eramalloor junction, due to the rash and negligent driving of the first respondent, the car hit against a tourist bus which was parked on the western side of the National Highway. Due to the impact of the collision, the aforesaid tourist bus hit another tourist bus which was parked in front of it. The appellants who sustained serious injuries in the accident were admitted at KVM Hospital, Cherthala and treated there as inpatients and subsequently they were treated in other hospitals as well.

2. The appellants filed O.P.(MV) Nos. 647 of 2002 and 645 of 2002 respectively claiming compensation of Rs. 1,50,000/- and Rs. 2,64,500/- respectively for the injuries sustained by them. The first respondent is the driver of the Maruti car, the second respondent is its owner and the third respondent is its driver. Respondents 4 and 5 are the owner and insurer of the tourist bus bearing

registration No. KL-8/D-7770 and respondents 6 and 7 are the owner and insurer of the tourist bus bearing registration No. KL-4/J-1043.

3. Initially the claim petitions were dismissed by the Tribunal and the order of dismissal was set aside by this Court by judgment delivered on 4.4.2012 in M.A.C.A. No. 1928 of 2011 and the cases were remanded to the Tribunal for fresh disposal after providing an opportunity to the appellants to adduce evidence. After remand, on the side of the appellants, P.Ws. 1 and 2 were examined and Exts. A1 to A15 were marked. On the side of the third respondent, D.Ws. 1 and 2 were examined and Exts. B1 and B2 were marked.

4. The Tribunal by a common award dated 10.8.2012 once again dismissed the claim petitions holding that, there is total lack of evidence to prove negligence on the part of the first respondent-driver and in such circumstances, the appellants cannot succeed in a claim under Section 166 of the Motor Vehicles Act, 1988. In view of the said finding, the Tribunal held that the appellants are not entitled for any compensation and resultantly, dismissed both the claim petitions. Aggrieved by the award passed by the Tribunal on 10.8.2012, in O.P. (MV) Nos. 645 of 2002 and 647 of 2002, the appellants are before us in these appeals.

5. We heard the arguments of the learned counsel for the appellants, the learned Standing Counsel for the third respondent, the insurer of the Maruti car and also the learned Standing Counsel for respondents 5 and 7, who are the insurers of the tourist buses involved in the accident.

6. The sole issue that arises for consideration in these appeals is whether the Tribunal was justified in rejecting the claim petitions on the ground that there is total lack of materials to prove any negligence on the part of the first respondent-driver, who was driving the Maruti car at the time of the accident.

7. In the claim petitions filed before the Tribunal, the common case of the appellants was that at the time of accident, they were travelling in a Maruti car bearing registration No. KL-2/G-6800 driven by the first respondent. When the vehicle reached Eramalloor junction, due to the rash and negligent driving of the first respondent, the car hit against a tourist bus bearing registration No. KL-8/D-7770 parked on the road margin on the western side of the National Highway. On account of the impact, the said bus hit against another tourist bus bearing registration No. KL-4/J-1043 parked in front of it.

8. The third respondent-insurer filed a written statement contending that the accident occurred not due to the negligence of the first respondent-driver of the Maruti car, that the Adoor police had registered Crime No. 177 of 2001 as a motor occurrence and after detailed investigation, the case was referred. It was contended further that, since there was no negligence on the part of the first respondent-driver, the third respondent, the insurer is not liable to indemnify the second respondent, the owner of the Maruti car against claims for payment of any compensation to the appellants.

9. On an earlier occasion, the claim petitions were dismissed by the Tribunal on the ground that the appellants did not substantiate their case by adducing proper evidence. The Tribunal had also taken note of the contention raised by the third respondent-insurer that no additional premium was paid to cover the passengers in the car. The common award passed by the Tribunal in dismissing the claim petitions was challenged in M.A.C.A. Nos. 1881 of 2011 and 1928 of 2011. The conditions in Ext. B1 policy produced before this Court made it clear that the Maruti car involved in the accident was covered by a comprehensive policy. The Division Bench of this Court by judgment delivered on 4.4.2012 in M.A.C.A. Nos. 1881 of 2011 and 1928 of 2011 set aside the common award passed by the Tribunal and remanded the claim petitions to the Tribunal for fresh disposal after affording both sides an opportunity to adduce fresh evidence, if they so choose. It was made clear in the said judgment that, in case the appellants become entitled to get any amount of compensation as per the revised award, the award shall not carry interest for the period from 12.8.2011 till the date of the revised award.

10. After the remand, the petitioners in both the claim petitions were examined as P.Ws. 1 and 2 and Exts. A1 to A15 were marked on their side. On the side of the respondents D.Ws. 1 and 2 were examined and Exts. B1 and B2 were marked.

11. From a reading of the written statement filed by the third respondent-insurer it is clear that the insurer has not in any way denied the involvement of the Maruti car in the accident in question. The fact that the appellants were passengers in the Maruti car driven by the first respondent and that they had sustained injuries in the accident in question is admitted in the written statement filed by the third respondent-insurer. But the third respondent-insurer contended that, the appellants should prove the nature of injuries and the period of hospitalisation with proper medical records. According to the third respondent-insurer, the accident occurred not due to any negligence on the part of the first respondent-driver and in such circumstances they are not liable to indemnify the second respondent-owner and compensate the appellants. According to the insurer, the accident occurred due to the negligence of the driver of bus bearing registration No. KL-8/D-7770.

12. The evidence adduced by P.Ws. 1 and 2 indicate that the accident happened when the first respondent-driver abruptly applied the break to save the life of a boy who crossed the road. The car skidded off the road and hit against the tourist bus parked on the road margin on the western side. On account of the impact of that collision, the said bus hit against another tourist bus parked in front of it. In Ext. A2 First Information Statement given by P.W. 2, he had stated that the accident occurred as a result of skidding of the Maruti car driven by the first respondent. But, the Tribunal, placing reliance of the statement of P.W. 2 recorded in Ext. P2 First Information Statement that, the first respondent was driving the car at a moderate speed at the time of accident and that the accident

occurred due to skidding, came to the conclusion that, it is a case of "motor occurrence" without the involvement of any negligence on the part of the first respondent-driver. To arrive at such a conclusion, the Tribunal has also relied on the statement of D.W. 2, the doctor who prepared Ext. A10 wound certificate, who has deposed that, the cause of accident disclosed by P.W. 2 was that, the Maruti car in which he was travelling skidded off the road and hit against another vehicle. The Tribunal has also relied on Ext. B2 final report in Crime No. 177 of 2001 of Adoor Police Station, in which the Police has referred the case without finding any negligence on the part of the first respondent-driver, against which the appellants have not chosen to file any protest complaint.

13. In *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, (1977) ACJ 343 : AIR 1977 SC 1735 : (1977) 2 SCC 745 : (1977) 3 SCR 372 the Apex Court, dealing with a case arising out of a claim made under Section 110A of the Motor Vehicles Act, 1939 (corresponding to Section 166 of the Motor Vehicles Act, 1988) held that, the general purport of the words "res ipsa loquitur" is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. The maxim "res ipsa loquitur" applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused. The relevant portion of paragraph 6 of the judgment reads thus;

"6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of "res ipsa loquitur". The general purport of the words "res ipsa loquitur" is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Edn.) at p. 306 states: "The maxim "res ipsa loquitur" applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Edn., Vol. 28, at p. 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence

"tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care..... "

14. In the case on hand, a perusal of Ext. A1 First Information Report, Ext. A2 First Information Statement, Ext. A3 Scene Mahazar and Ext. A4 Inspection Report of the Motor Vehicle Inspector would show that, the Maruti car in which the appellants were travelling was badly damaged in the accident. The buses which were parked on road margin on the western side of the National Highway were also damaged as the Maruti car hit violently. Going by Ext. A3 scene mahazar, the scene of occurrence is 150 meters southwards of Eramalloor junction in Ezhupunna Panchayat, on the western side of the National Highway from Alappuzha to Ernakulam, ahead of 1.38 meters from the tar end, which was paved with gravel. At the scene of occurrence, the Maruti car bearing registration No. KL-2/G-6800 was lying in the south-west direction. The bonnet of the car was found destroyed, curled and dented towards inside. The front grill, the radiator and the bumper of the car were found broken. The crash guard was found broken and separated. The body of the car on the front portion and the left side was dented and broken. The head light on the left side was broken. The door on the left side was dented and the top of the car was dented towards inside. The dash board of the car was found broken and both seats on the front side were moved from it's position and found slanting. The bumper, the indicator light on the right side and the grill of bus bearing registration No. KL-8/D-7770 were found broken and the corner portion of the body on the right side was found scratched and dented. The left portion on the front side was found collided on the eastern side of the bus bearing registration No. KL-4/J-1013 and the corner portion of the body on the front side of that bus and the door on the driver's side were found dented and the side glass, indicator light and head light were found broken.

15. The Maruti car in which the appellants were travelling was badly damaged in the accident. The damage sustained to the three vehicles involved in the accident, which are reflected in Ext. A3 Scene Mahazar and other documents already on record make it explicitly clear that, at the time of accident the first respondent was driving the car in a rash and negligent manner and at a high speed. When the evidence on record is sufficient to draw an inference that at the time of the accident the vehicle was under the control of the first respondent-driver and that the accident, in the ordinary course of things, would not have happened, if he had used proper care, the appellants who are the injured need only to prove the accident and nothing more. Then it is for the respondents to establish that the accident happened due to some other cause than the

negligence of the first respondent-driver. In the case on hand, the facts already established are such that the proper and natural inference arising therefrom is that the accident happened due to the negligence on the part of the first respondent-driver and that, at the time of accident the car was driven in a rash and negligent manner, at a high speed. In such a factual matrix, where it is so improbable that such an accident would have happened without the negligence of the first respondent-driver, the Tribunal went wrong in not applying the maxim "*res ipsa loquitur*".

16. In Pushpabai Purshottam Udeshi's case (*supra*) the Apex Court was dealing with a case in which a car dashed against a tree beyond the pavement as a result of which the tree was uprooted about 9 to 10 inches from the ground. The steering wheel and the engine of the car receded back on driver's side and by the said impact the occupants died and the front seat also moved back. Though the opposite parties had pleaded that it is a case of inevitable accident they had not lead any evidence to establish such a plea. The Apex Court, rejecting the defence of inevitable accident pleaded by the opposite parties, held that to establish a defence of inevitable accident the opposite parties will have to prove that the cause of the accident could not have been avoided by exercise of ordinary care and caution. They must either show what caused the accident and that the result was inevitable, or they must show all possible causes, one or more of which produced the effect, and with regard to each of such possible causes they must show that the result could not have been avoided. The relevant portion of paragraph 5 of the judgment reads thus;

"5..... The Claims Tribunal on this evidence found that "it was admittedly a mishap on the right side of the road wherein the vehicle had dashed against a tree beyond the pavement so violently as not only to damage the vehicle badly but also entailing death of its three occupants, maxim "*res ipsa loquitur*" applies (See *Eloor v. Selfridge*, (1930 (46) TLR 236)". The Tribunal proceeded to discuss the evidence of P.W. 1 and found on the evidence that it cannot help concluding that the dashing of the car against the tree was most violent and that it was for the respondents to establish that it was a case of inevitable accident. They have led no evidence. It may at once be stated that though the opposite parties had pleaded that this is a case of inevitable accident they have not lead any evidence to establish their plea. The burden rests on the opposite party to prove the inevitable accident. To succeed in such a defence the opposite party will have to establish that the cause of the accident could not have been avoided by exercise of ordinary care and caution "To establish a defence of inevitable accident the defendant must either show what caused the accident and that the result was inevitable, or he must show all possible causes, one or more of which produced the effect, and with regard to each of such possible causes he must show that the result could not have been avoided." (Halsbury's Laws of England, 3rd Edn., Vol. 28, p. 81)..... "

17. In the case on hand, no attempt was made by the respondents to raise a

specific plea of inevitable accident before the Tribunal. The respondents have also not chosen to produce any eye witnesses. Further, Ext. A3 Scene Mahazar is not in dispute. The third respondent-insurer has no case that the damage sustained to the vehicles involved in the accident, as recorded in the Scene Mahazar is contrary to facts. When the accident is proved and by its nature, if it is more consistent with the case that it was caused by the negligence of the driver, the doctrine "res ipsa loquitur" applies and a presumption of negligence can be inferred as the accident "speaks for itself". The burden then shifts to the driver to show that he was not negligent at the time of the accident. In view of the application of the principle underlying the maxim "res ipsa loquitur", no further evidence is required to prove the rash and negligent driving of the car by the first respondent. Since the evidence on record is sufficient to prove, by applying the maxim "res ipsa loquitur", the case set up by the appellants regarding the rash and negligent driving of the car by first respondent, the Tribunal went wrong in concluding that, there is total lack of evidence to prove negligence on the part of the first respondent-driver and that, appellants cannot succeed a claim under Section 166 of the Motor Vehicles Act, 1988.

18. The Apex Court as well as this Court has held in umpteen number of cases that, the standard of proof required to prove negligence in a claims petition filed under Section 166 of the Motor Vehicles Act, 1988 is different from the standard of proof required in a criminal case. In *Sherin J. Thankom Vs. Thankom*, (2014) 4 ACC 317 : (2014) ACJ 2673 : (2014) 3 ILR (Ker) 211 : (2014) 3 KLJ 250 : (2014) 3 KLT 44 a Division Bench of this Court, to which one among us (Anil K. Narendran, J.) was a party, held that, in deciding matters arising out of accident cases the Tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a claim before the Tribunal the standard of proof is much below than what is required in a criminal case as well as in a civil case. Paragraphs 14 and 15 of the judgment read thus;

"14. In *Kusum Lata and Others Vs. Satbir and Others*, (2011) ACJ 926 : AIR 2011 SC 1234 : (2011) 162 PLR 490 : (2011) 2 RCR(Civil) 379 : (2011) 3 SCALE 74 : (2011) 3 SCC 646 : (2011) 2 SCC(Cri) 18 : (2011) 3 SCR 480 : (2011) 2 TAC 1 : (2011) AIRSCW 1593 : (2011) 2 Supreme 207 the Apex Court held as follows; It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. Later, in *Parmeshwari Vs. Amir Chand and Others*, (2011) ACJ 1613 : AIR 2011 SC 1504 : (2011) 2 RCR(Civil) 152 : (2011) 2 SCALE 398 : (2011) 11 SCC 635 : (2011) 1 SCR 1096 : (2011) AIRSCW 3240 : (2011) AIRSCW 1551 : (2011) 3 Supreme 524 the Apex Court reiterated that, in a road accident claim, the strict principles of proof in a criminal case are not attracted. In *Parameshwari's* case (supra), the Apex Court had taken note of the observation made in its earlier judgment in *Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others*, (2009) ACJ 1725 : AIR 2009 SC 2819 : (2009) 5 JT 515 : (2009) 5 SCALE 706 :

(2009) 13 SCC 530 : (2009) 6 SCR 362 : (2009) 6 UJ 2709 : (2009) AIRSCW 4298 that, the claimants were merely to establish their case on the touchstone of preponderance of probability and that standard of proof beyond reasonable doubt could not have been applied.

15. Prima facie we find that the reasoning given by the Tribunal in the impugned common award is in conflict with the principle laid down in the judgments of the Apex Court referred to above. In deciding matters arising out of accident cases the Tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a claim before the Tribunal the standard of proof is much below than what is required in a criminal case as well as in a civil case. No doubt before the Tribunal, there must be some material on the basis of which the Tribunal can arrive at or decide things necessary to be decided for awarding compensation. In such circumstances, we hold that the reasoning given by Tribunal in the impugned common award, in order to reject the claim petitions filed by the appellants are unsustainable and the said common award is liable to be set aside in these appeals."

19. The Apex Court has in N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, (1980) ACJ 435 : AIR 1980 SC 1354 : (1980) 41 FLR 152 : (1980) 3 SCC 457 : (1980) SCC(Cri) 774 : (1980) 3 SCR 101 : (1980) 12 UJ 414 held that in accident cases, "the Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. It was held that save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable and that, the court should not succumb to niceties, technicalities and mystic maybes."

20. From the impugned award passed by the Tribunal, we find that the Tribunal was carried away by Ext. B2 Final Report, by which the police had closed the investigation in Crime No. 177 of 2001 on a finding that it is only an accident case, against which the appellants have not filed any protest complaint. As per the Final Report, the accident occurred while the first respondent applied the break in order to save a child who crossed the road. The Tribunal has also referred to the statement given by P.W. 2 in Ext. A2 First Information Statement that, at the time of accident the vehicle was driven by the first respondent at a moderate speed, in order to conclude that there was no negligence on the part of the first respondent in driving the car. As we have already noticed, Ext. A3 Scene Mahazar is not in dispute. The extent of damage sustained to the vehicles involved in the accident, as recorded in Ext. A3 Scene Mahazar, alone is sufficient to draw an inference that, at the time of accident the car was driven by the first respondent in a rash and negligent manner, at a high speed and that the accident, in the ordinary course of things, would not have happened if he had used proper care. As the doctrine of "res ipsa loquitur" applies in such a factual matrix, the finding entered by the Tribunal relying on Ext. B2 Final Report and

the statement made in Ext. A2 First Information Statement that, at the time of accident the vehicle was driven at a moderate speed and that there is total lack of evidence to prove negligence on the part of the first respondent-driver, is perverse and patently illegal and cannot in our opinion be sustained in law. In such circumstances, we are constrained to hold that the Tribunal had committed a grave illegality in not appreciating the evidence on record in its proper perspective.

In the result, we set aside the common award dated 10.8.2012 passed by the Motor Accidents Claims Tribunal, Mavelikara, in O.P. (MV) Nos. 645 of 2002 and 647 of 2002, and hold that the accident in question occurred due to the rash and negligent driving of the motor car by the first respondent-driver and that the appellants can maintain a claim before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988. We accordingly remand the claim petitions to the Tribunal for the limited purpose of quantifying the compensation, which the claimants are legally entitled for, under different heads. Since the claim petitions are of the year 2002, we direct the Tribunal to finally dispose of the claim petitions, as expeditiously as possible and at any rate within a period of four months from the date of production of a certified copy of this judgment. The parties are directed to appear before the Tribunal through counsel on 20.5.2015.