
(2010) 01 KL CK 0099
In the High Court Of Kerala
Case No : MACA. No. 1128 of 2006

Xavier Joseph, Lilly Joseph and Sajan Joseph	APPELLANT
Vs	
D. Das and Others	RESPONDENT

Date of Decision : 04-01-2010

Acts Referred:

Citation : (2010) 01 KL CK 0099

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : K.K. Chandran Pillai, for the Appellant; K. Abdul Jawad, for the Respondent

Judgement

R. Basant, J.—The claimants before the Tribunal are the appellants before us. They are the legal heirs of the deceased. The deceased was riding as pillion in a motor cycle. Respondent No. 4 was the rider of that motor cycle. Respondent No. 5 was the owner of the motor cycle. He died and additional respondents 7 and 8 are the legal heirs of the deceased owner of the motor cycle. Respondent No. 6 is the insurer of the said motor cycle.

2. While the deceased was travelling as pillion in the motor cycle which the 4th respondent was riding, it met with an accident. A jeep driven by the first respondent, owned by the second respondent and insured with the third respondent was involved in that accident. The deceased suffered injuries in that accident and succumbed to those injuries. Compensation was claimed from respondents 1 to 3 being the driver, owner and insurer respectively of the jeep involved in the accident. Respondents 1 and 2 remained ex parte. The third respondent admitted the policy of insurance but denied any negligence on the part of the first respondent. The parties went to trial on these contentions. No oral evidence was adduced by either side. Exts.A1 to A9 were marked on the side of the claimants and Ext.B1 policy of insurance was marked on the side of the third respondent.

3. The court below took note of the fact that the police after investigation had filed a final report alleging that the first respondent was culpably negligent and such negligence was the cause of the accident. However, the court below took note of Ext.A7 judgment in the criminal case against the first respondent which ended in acquittal of the first respondent. In the total absence of any oral evidence, the court below proceeded to hold that the alleged negligence of the first respondent has not been established. Accordingly, the court below proceeded to pass the impugned award.

4. Before us, the learned Counsel for the appellants/claimants and the learned counsel for the third respondent have advanced their arguments. The claim is only against Respondents 1 to 3, even though the rider, owner and insurer of the motor cycle in which the deceased was travelling have also been arrayed as respondents.

5. The learned Counsel for the appellants contends that the court below erred in placing significance and importance on Ext.A7 judgment of acquittal. Culpable negligence must be distinguished from negligence which can be the foundation for an action on tort, contends the learned Counsel. The learned Counsel for the Insurance Company on the contrary contends that Ext.A7 judgment of acquittal would obliterate the significance and relevance of Ext.A3. In these circumstances, the burden was heavily on the claimants to prove that the accident had taken place on account of the negligence of the first respondent. In the total absence of any positive evidence on that aspect, the court below found cannot be faulted for rejecting the claim of the claimants, contends the learned Counsel for the Insurance Company.

6. The learned Counsel for the Insurer submits that left with no other option, the court below had taken note of the indications available in the scene mahazar etc. to gravitate to the conclusion that there was no proof of any negligence on the part of the first respondent.

7. The learned Counsel for the appellants/claimants submits that an indulgent further opportunity may in these circumstances be granted to the claimants to adduce oral evidence before the court below to prove the cause of the accident. Why was such evidence not adduced earlier ? No satisfactory reasons are forthcoming. It is prayed that an indulgent further opportunity may be granted, even if it be assumed that such evidence about the cause of the accident must have been adduced before the court below.

8. Having considered all the relevant circumstances, we are persuaded to accept the last request made by the learned Counsel for the appellants/claimants. In the nature of the unfortunate consequence of the accident - i.e. the death of the predecessor of the claimants, we are persuaded to agree that such indulgent further opportunity can be granted to the appellants, notwithstanding the contumacious lapse in not adducing proper evidence before the court below. We are persuaded to feel that the interests of justice would be served ideally by

granting such an opportunity to the claimants. Appropriate conditions can of course be imposed.

9. In the result:

a) this appeal is allowed in part.

b) The impugned award shall stand set aside and the court below shall be directed to dispose of O.P.(M.V.) No. 1131/2001 afresh in accordance with law on condition that the appellants/claimants deposit an amount of Rs. 1,000/- (Rupees one thousand only) to the third respondent within a period of one month from this date.

c) The parties shall appear before the court below on 8-2-2010.

d) If the amount is deposited as directed, the court below shall dispose of O.P. (M.V.) No. 1131/2001 afresh after granting the parties opportunity to adduce appropriate and relevant evidence before the court below.

e) We further direct that the Tribunal shall dispose of such case as expeditiously as possible thereafter, at any rate within a period of three months from 8-2-2010.

f) If the amount is not deposited as directed, the court below shall record that fact on 8-2-2010 and thereupon the impugned award shall stand revived.