(2025) 01 KL CK 0036

High Court Of Kerala

Case No: M.A.C.A No. 2514 Of 2019

Mahadevan.K		APPELLANT
	Vs	
Lissy Vincent		RESPONDENT

Date of Decision: Jan. 15, 2025

Acts Referred:

- Code of Civil Procedure, 1908 - Order 41 Rule 33
- Indian Penal Code, 1860 - Section 279, 304A
- Motor Vehicles Act, 1988 - Section 166

Hon'ble Judges: Johnson John, J

Bench: Single Bench

Advocate: A.N.Santhosh, Philip T.Varghese, Thomas T.Varghese, Achu Subha Abraham, M.F.Mohammod Siyad, V.T.Litha, K.R.Monisha, Mathew George Vadakkel

Final Decision: Dismissed

Judgement

,,,

Johnson John, J",,,

1. This appeal is filed by the first respondent in O.P.(M.V) No. 1497 of 2012 of the Motor Accident Claims Tribunal, Ernakulam.",,,

2. The appellant is the owner of the vehicle and he is challenging the order permitting the 3rd respondent insurance company to recover the award,,,

amount from the owner of the vehicle after payment to the petitioners and also the quantum of compensation fixed by the Tribunal as not fair and,,,

reasonable.,,,

3. The claim petitioners are the legal heirs of the deceased Vincent, who died in a motor vehicle accident occurred on 19.06.2012. The 2nd respondent",,,

was the driver of the offending vehicle and the 3rd respondent was the insurer.,,,

4. Before the Tribunal, PW1 was examined and Exhibits A1 to A15 were marked from the side of the petitioners and from the side of the",,,

respondents, RWs 1 and 2 were examined and Exhibits B1 to B5 were marked.",,,

5. After trial and hearing both sides, the Tribunal arrived at a finding that the accident occurred because of the negligence on the part of the 2nd",,,

respondent driver of the vehicle and awarded a total compensation of Rs.11,24,875/- to the petitioners.",,,

6. The third respondent insurance company was also permitted to recover the award amount from the owner of the vehicle after payment to the,,,

petitioners on the ground that the 2nd respondent was not having a valid driving licence as on the date of the accident.,,,

7. Heard both sides and perused the records.,,,

8. The learned counsel for the appellant argued that the 2nd respondent was not the driver of the vehicle at the time of the accident and that the,,,

vehicle was driven by one Unnikrishnan and the said Unnikrishnan was having a valid driving licence and therefore, the finding of the Tribunal in this",,,

regard is liable to be set aside.,,,

9. In paragraph 3 of the written statement filed by the owner of the vehicle, it is stated as follows:",,,

Â â€œThe contentions raised in the above application are not true. It is submitted that the vehicle was being driven by one Mr. Unnikrishnan, S/o. Bharathan,",,,

Mundopadam Veedu, Cheranelloor P.O., Cochin - 682 034 at the time of accident. The injured was taken to the hospital by said Unnikrishnan only. But the police",,,

upon the statement of said Unnikrishnan that the 2nd respondent was the usual driver of the mini lorry involved in the accident and in collusion with him, without",,,

proper investigation, made the 2nd respondent as accused in the Crime No. 5746/2012. It is informed that the 2nd respondent also made complaint informing the",,,

actual facts to the investigating officer and the CI of police in wrongly making him as accused in the above Crime. Therefore, the above application is bad for non-",,,

joinder of necessary parties.â€,,,

10. It is pertinent to note that the appellant has not disclosed as to who was the driver engaged by him and what exactly was the relationship between,,,

him and the 2nd respondent as on the date of the accident. A perusal of Exhibit A2 charge sheet filed by the police after investigation shows that the,,,

2nd respondent was charge-sheeted for the offences under Sections 279 and 304 A IPC in connection with the occurrence and that a petty case was,,,

registered against the owner of the vehicle for engaging the 2nd respondent who was not having a valid driving licence for driving the vehicle.,,,

11. Before the Tribunal, the appellant herein is examined as RW1 and in chief examination, he reiterated the contentions in the written statement. In",,,

cross examination, RW1 admitted that the police filed charge sheet against the 2nd respondent. It is pertinent to note that the appellant is not a witness",,,

to the occurrence and therefore, his evidence that it was not the 2nd respondent who driven the vehicle at the time of accident cannot be relied upon",,,

to record a finding against Exhibit A2 charge sheet filed by the police after investigation.,,,

12. The 2nd respondent is examined as RW2. In chief examination, RW2 stated that he started working with the 1st respondent 3 years prior to the",,,

occurrence and after the occurrence, he has not worked with the 1st respondent. RW2 further admitted that at the time of the accident, his driving",,,

licence was under suspension. According to RW2, he reached the place of occurrence on hearing about the accident and also assisted in taking the",,,

injured persons to hospital in an autorickshaw.,,,

13. In New India Assurance Co.Ltd. v. Pazhaniammal and Others (2011(3) KHC 595),t his Court held that as a general rule, production of the",,,

police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under Section 166 of the Motor vehicles Act. In the said,,,

decision, it was also held that if any one of the parities do not accept such charge sheet, the burden must be on such party to adduce oral evidence and",,,

if oral evidence is adduced by any party in a case where charge sheet is filed, the Tribunals should give further opportunity to others also to adduce",,,

oral evidence and in such a case, the charge sheet will pale into insignificance and the dispute will have to be decided on the basis of the evidence. It",,,

was further held that in all other cases, such charge sheet can be reckoned as sufficient evidence of negligence in a claim under Section 166 of the",,,

Motor Vehicles Act.,,,

14. The decision of the Hon'ble Supreme court in Mathew Alexander v. Muhammed Shafi (2023 INSC 621)shows that strict proof of an accident,,,

caused by a particular vehicle in a particular manner need not be established by the claimants and that the claimants need only to establish their case,,,

on the touchstone of preponderance of probabilities. In the said case, it was also held that the standard of proof beyond reasonable doubt cannot be",,,

applied while considering the petition seeking compensation on account of death or injury in a road traffic accident.,,,

15. As noticed earlier, the contentions raised by the appellant in the written statement regarding his relationship with the 2nd respondent and as to who",,,

was the driver engaged by him on the date of occurrence are vague. The appellant has no case that there was no employer-employee relationship,,,

between himself and the 2nd respondent as on the date of the accident. The fact that the 2nd respondent was not having a valid driving licence as on,,,

the date of occurrence is also not disputed. Therefore, I find that there is no satisfactory evidence to arrive at a conclusion that the offending vehicle",,,

was driven by a driver having valid driving licence at the time of occurrence and therefore, I find no reason to interfere with the finding of the Tribunal",,,

that there is violation of policy conditions by the insured.,,,

16. The deceased was a mason aged 55 years at the time of the accident. The Tribunal accepted Rs.7,500/- as monthly notional income of the",,,

deceased. The Tribunal calculated the said monthly notional income by taking Rs.500/- as daily wage and by calculating the daily wages for 15 days,,,

by assuming that the deceased will get work only for 15 days in a month. I find merit in the argument of the learned counsel for the respondent/claim,,,

petitioners that the Tribunal ought to have calculated the notional income by taking note of the fact that the deceased will be getting work at least for,,,

25 days in a month. Therefore, considering the facts and circumstances, I find that the monthly income of Rs.12,000/- claimed in the petition is only",,,

reasonable and the same can be accepted as notional income for the purpose of calculating the compensation for loss of dependency.,,,

17. The decision of the Hon'ble Supreme Court in National Insurance Co.Ltd. v Pranay Sethi [(2017) 16 SCC 680]and Jagdish v. Mohan,,,

[(2018) 4 SCC 571] shows that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to,,,

Sl.No,Particulars,"Compensation

awarded by the

Tribunal (Rs.)","Final Amount

Payable

1,Loss of dependency,"8,53,875","13,06,800/-

2,Loss of estate,"20,000/-","18,150/-

3,Funeral expenses,"25,000/-","18,150/-

4,Loss of consortium,"1,00,000/-","48,400/-

5,Transport to hospital,"4,000/-","4,000/-

6,Pain and sufferings,"10,000/-","10,000/-

7,Medical expenses,"10,000/-","10,000/-

8,Damage to clothing and articles,"2,000/-","2,000/-

9,Love and affection,"1,00,000/-",NIL

,Total amount Payable,"11,24,875/-","14,17,500/-