Sony George Vs Sreejith K.G.

Court: High Court Of Kerala

Date of Decision: Jan. 16, 2025

Acts Referred: Motor Vehicles Act, 1988 â€" Section 140, 140(1), 166

Hon'ble Judges: C. Pratheep Kumar, J

Bench: Single Bench

Advocate: R.Krishnakumar, Tiny Thomas, S.Jayakrishnan, R.Gireesh Varma

Final Decision: Partly Allowed

Judgement

C. Pratheep Kumar, J

1. The petitioner in OP(MV).No.521 of 2015 on the file of Motor accident Claims Tribunal Pala is the appellant. The respondents in the OP are the

respondents herein. He filed the above OP under Section 166 of the Motor Vehicles Act, claiming compensation on account of the injuries sustained in

the motor vehicle accident that occurred on 15.10.2011.

2. According to the petitioner, on 15.10.2011, he was riding a two wheeler TN 09 AB 1035 and when it reached Pala Kottaramattom on Pala Vaikom

road, another two wheeler KL 36A 4654, rode by 1st respondent, collided with his two wheeler and as a result of which he sustained serious injuries.

The 2nd respondent is the insurer of the offending vehicle. According to the petitioner, the accident occurred due to the negligence of the 1st

respondent. In the petition, he claimed a total compensation of Rs.2,50,000/-

3. The 1st respondent filed written statement contending that the accident occurred due to the negligence of the petitioner. According to him, he was

driving the vehicle with due care and caution and the accident occurred as the petitioner, who was moving in front of the two wheeler of the petitioner

suddenly turned his vehicle, without giving signal and that is why the accident occurred. The 2nd respondent also raised similar contentions and

contended that the petitioner is not entitled to get any compensation.

4. The evidence in the case consists of the oral testimonies of PWs 1 to 3 and RW1 and Exhibits A1 to A12 series, B1 and B2. After analysing the

evidence on record, the Tribunal found that the accident occurred due to the negligence of the claimant also, that since he is one of the tort-feasors, he

is not entitled to compensation from the other tort-feasor and thereafter dismissed the petition. Dissatisfied with the impugned order of the Tribunal, he

preferred this appeal.

5. Now, the point that arises for consideration is the following:

Whether the Tribunal was justified in dismissing the claim petition on the ground that the petitioner is a joint tort-feasor?

6. Heard Sri. R. Krishnakumar, the learned counsel for the petitioner and Sri. R. Gireesh Varma, the learned Standing Counsel for the 2nd respondent.

7. The point: The fact that the petitioner sustained injuries in the motor vehicle accident involving two vehicles, is not disputed. At the time of the

accident on 15.10.2011, the petitioner was riding his two wheeler TN 09AB 1035 and the 1st respondent was riding his two wheeler KL 36A 4654.

While according to the petitioner, the accident occurred due to the negligence of the 1st respondent, according to the respondents, the accident

occurred as the petitioner, who was moving in front of the motor vehicle of the 1st respondent, suddenly moved the vehicle towards right, without

giving signal. Interestingly, in this case, the police filed two charges, one against the petitioner and the other against the 1st respondent. Both sides also

adduced evidence in support of their rival contentions.

8. Exhibit A1 is the copy of the FIR in crime No.1102/2011 Pala Police Station and Exhibit A2 is the copy of FIS in the said crime. Exhibit A3 is the

copy of the scene mahazar and Exhibit A4 is the copy of the AMVI report of the vehicle KL36 A 4654. Exhibit A5 is the copy of final report (B

charge) against the 1st respondent. On the side of the respondent certified copy of A charge was produced and marked as Exhibit B1. Exhibit B2 is

the copy of the Award of MACT, Kottayam in OP MV 503 of 2014 filed by the 1st respondent as claimant. In Exhibit B2, MACT, Kottayam found

that the petitioner herein as well as the 1st respondent herein contributed to the accident and accordingly, only 50% of the compensation was awarded

in favour of the 1st respondent herein.

9. Learned counsel for the 2nd respondent, relying upon the decision of a Single Bench of this Court in Muhammed v. Asharaf and Others [2014 (1)

KHC 379] would argue that it is a case of composite negligence of drivers of two vehicles and as such one driver cannot claim compensation from the

driver and owner of the other vehicle. It is true that in the above judgment, the learned Single Judge observed that: where both drivers are culpable

and at fault, the percentage of negligence of each driver has to be determined and that if both have contributed the occurrence equally,

there is no question of awarding compensation to one from the other, since as a tort-feasor he would be liable equally to the other joint tort-

feasor.

10. Another decision relied upon by the learned counsel for the 2nd respondent is, Thomas v. Mathew NM and Others [1995 (2) ACJ 1243]. In the

above decision, the question involved was, when a claimant himself is equally answerable to no-fault liability under Section 140 of the Motor

Vehicles Act,1988, along with another vehicle owner, can the former be given an award to realise compensation from the latter ? In answer

to the above question, a Division Bench of this Court held that joint and several liabilities mentioned in Sub Section (1) of Section 140 of the Motor

Vehicles Act applies only to 3rd persons and not to one of the joint tort-feasors. In the instant case, the petition is not under Section 140 of the MV

Act, but under section 166 and as such the decision in Thomas (supra) does not apply to the facts of this case.

11. The difference between contributory and composite negligence was elaborately discussed by the Hon'ble Supreme Court in the decision in

Khenyei v. New India Assurance Co. Ltd. And Others [2015 (9) SCC 273], relied upon by the learned counsel for the 2nd respondent. In paragraph

14, Hon'ble Supreme Court held that:

Ã¢â‚¬Å“14. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the

extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite

negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons. This Court

in T.O. Anthony v. Karvarnan & Ors. [2008 (3) SCC 748] has held that in case of contributory negligence, injured need not establish the extent of responsibility

of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately. It is only in the case of

contributory negligence that the injured himself has contributed by his negligence in the accident. Extent of his negligence is required to be determined as

damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence Ã¢â‚¬â€‹

12. In the above decision, the Hon'ble Supreme Court has quoted with approval, paragraph 6 and 7 in the decision in T.O. Anthony (supra), as follows:

Ã¢â‚¬Å“6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or

more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly

and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a

case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability

of each wrong- doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly

as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence.

Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable

by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other

driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was

negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore

where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was

50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided

confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.Ã¢â‚¬â€‹

13. In the instant case, even as per the finding of the Tribunal, both the petitioner as well as the 1st respondent contributed for the accident. In other

words, the petitioner herein sustained injury, partly because of his own negligence and partly because of the negligence of the 1st respondent.

Therefore, it is a case of contributory negligence and not composite negligence. For the mere reason that there was contributory negligence on the

part of the petitioner, his claim for damages cannot be rejected, but the damages recoverable by him in respect of the injuries stands only reduced in

proportion to his contributory negligence.

14. In the above circumstances, going by the dictum laid down by the Hon'ble Supreme Court in Khenyei (supra), in the instant case, the extent of

negligence on the part of the petitioner is to be determined and the damages recoverable by him in respect of the injuries have to be reduced in

proportion to his contributory negligence. Therefore, the finding of the Tribunal that the petitioner is not entitled to get any compensation from the

driver and owner of the other vehicle is not legally sustainable.

15. The learned counsel for the 2nd respondent relied upon another decision of the Hon'ble Supreme Court in National Insurance Company Ltd. v.

Chamundeswari & Ors. (Civil Appeal No.6151 of 2021 decided on 1.10.2021), in support of his argument. In that case, a van which was going in front

of the car, has taken a sudden right turn without giving any signal or indicator. In the FIR, it was alleged that the accident occurred due to the

negligence of the deceased, who was driving the car. On the above facts, the Apex Court held that the oral evidence of the witness is to be given

weightage over the contents of the FIR.

16. In Exhibit B2 Award passed by another Tribunal, in a claim petition filed by the 1st respondent, it was found that there was 50% contributory

negligence on the part of the 1st respondent also. Though the Tribunal found that there is only contributory negligence on the part of the petitioner as

well as the 1st respondent, the percentage of contribution on the part of each of them was not assessed. Tribunal was not justified in completely

dismissing the O.P.

17. From Exhibit A5 and B1 final reports, it can be seen that the Police, after investigation, filed two separate charges against the petitioner and the

1st respondent. In the light of the decision of a Division Bench of this court in Pazhaniappan (supra), final report is prima facie proof of negligence of

the accused therein. Further in this case there is the oral testimonies of PWs1 to 3 and RW1. From the evidence of PWs 1 to 3 and RW1 also, it is

revealed that there is contributory negligence on the part of both drivers.

18. At the time of evidence, the petitioner as PW1 deposed that the accident occurred while he was turning his motor cycle towards right side and

according to him, the accident occurred due to the negligence of the 1st respondent. PW2, another witness examined by the petitioner also deposed

that the accident occurred due to the negligence of the 1st respondent.

19. On the other hand, the respondent as RW1 would swear that the accident occurred as the petitioner, who was riding the motor cycle suddenly

turned towards right, without giving any signal. However, during cross examination, he clarified that the accident occurred on the right side of the road

and that he was moving along the left side of the road. According to him, at first he saw the petitionerÃ¢â‚¬â„¢s vehicle about 50 metres ahead of him and

the accident occurred when he reached just behind the said vehicle. He further deposed that, on seeing the petitioner turning towards right, he also

turned his vehicle towards right. Therefore, it can be seen that when the petitioner turned his motor cycle towards right, if the respondent turned his

vehicle towards left, the accident could have been averted. Rule 23 of the Rules of Road Regulation, 1989 provides for keeping sufficient distance

from the vehicle in front to avoid collision if the vehicle in front should suddenly slow down or stop. From the above conduct of the 1st respondent it

can also be seen that he did not maintain sufficient distance from the vehicle moving ahead of it. If he had maintained sufficient distance, when the

petitioner turned his motor cycle towards right, he could have turned his vehicle towards left, and thereby averted the accident.

20. Since Ext.B2 award was passed by a Tribunal competent to decide the issue, which is directly and substantially in issue in this case, the same is

binding on the parties. Since in Exhibit B2, the Tribunal has held that there was 50% contribution on the part of the 1st respondent, I am constrained to

hold that the remaining 50% contribution for the accident is on the part of the petitioner. Regarding the quantum of compensation awarded by the

Tribunal, neither of the parties raised any challenge. In the above circumstances, the Tribunal ought to have awarded 50% of the compensation

estimated by it (Rs.2,86,418/-) to the petitioner. In the above circumstances, this appeal is liable to be allowed in part, as follows:

21. The 2nd respondent is directed to deposit Rs.1,43,209/- (50% of 2,86,418), along with interest @ 8% per annum, from the date of the petition till

deposit, with proportionate costs, within a period of two months from today. On depositing the aforesaid amount, the Tribunal shall disburse the entire

amount to the petitioner, excluding court fee payable, if any, without delay, as per rules.