Chacko Vs Mariakutty and Others

Court: High Court Of Kerala

Date of Decision: July 16, 1986

Acts Referred: Motor Vehicles Act, 1988 â€" Section 2

Citation: (1987) 2 ACC 168 : (1987) ACJ 557

Hon'ble Judges: Sivaraman Nair, J; John Mathew, J

Bench: Division Bench

Judgement

Sivaraman Nair, J.
The second respondent in M.V.O.P. No. 152 of 1979 before the Motor Accidents Claims Tribunal, Ernakulam, has

filed this appeal against the judgment of the Tribunal completely excluding the insurer from any liability for payment of compensation for the death

of the husband of the first claimant and father of claimants 2 to 8.

2. The accident occurred on 21-5-1976 at about 4.00 p.m. on a road leading from a Panchayat road to a quarry near Amamhlam Thakidi,

Meenad Village. The accident occurred at a time when a lorry owned by the second respondent, who is the appellant before us, and which was

being driven by the first respondent before the Tribunal, was being reversed from the Panchayat Road to the road leading to the quarry. The driver

remained exparte before the Tribunal. The insurer and the insured, the appellant, alone contested the claim advanced by the legal representatives of

the deceased claiming an amount of Rs. 1 lakh towards compensation.

3. The insurance company in its written objection had stated that the accident occurred at a private place and therefore the insurance policy did not

cover any obligation to compensate the claimants. Six witnesses were examined on behalf of the claimants and Exts. A1 to A4 were marked.

4. The Tribunal held that the accident occurred due to the negligence of the driver. On a consideration of the materials available before it, the

Tribunal granted a total amount of Rs. 15,000/- as compensation due to the legal representatives; but, confined the obligation to pay the

compensation only to the owner and the driver of the vehicle for the following reasons:

Admittedly the accident took place in a private quarry. This quarry is owned by a private person. This cannot be said to be a public place. Public

have no right to enter this private property. They can enter only under a licence. Issue found against the petitioners.

5. The scope of this appeal is confined to this finding that the accident occurred at a private place, and therefore the insurer was not liable to

compensate the claimants.

6. Counsel for the appellant referred us to the evidence of PWs. 4 to 6. The effect of such evidence was that there was no gate restricting entry

into the premises of the quarry, that no permission of the owner was required for entry thereto, and that on no occasion had the right to enter been

denied by the owner to the public. Counsel submits that entry into the quarry not having regulated in any manner, and in any case, no evidence in

relation to such regulation having been adduced before the Tribunal, the Tribunal should not have entered a finding on the assumption that the

quarry was not a public place and the public had no right to enter this private property. An objection is also taken to the statement in the judgment

to the effect that the parties admitted that the accident took place in a private quarry. Reference is also made by counsel to Ext. A3, first

information report in Crime No. 71 of 1976 of Piravom Police Station, where it was stated that the accident occurred on the road to the granite

quarry of Kuttappan. The same statement is seen repeated in Ext. A4, charge sheet, also.

7. Counsel appearing for the claimants asserted before us that neither the claimants nor the owner had admitted that the accident occurred at a

private place. Nor had they admitted that the quarry was not a public place where licence from anybody was necessary for gaining entry into the

road leading to the quarry. The finding entered by the Tribunal, in these circumstances seems to be unjustified.

8. Counsel for the appellant referred us to Section 2(24) of the Motor Vehicles Act, which defines a "public place" for the purpose of this

enactment. Public place is defined to mean, ""a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of

access, and includes any place or stand at which passengers are picked up or set down by a stage carriage"". He also referred us to a number of

decisions, AIR 1967 Ker 160, Life Insurance Corporation of India Vs. Karthyani and Others, , to make out that if entry into a place, though

private is unrestricted as far as the public is concerned, that place may be a public place. It is submitted that accidents occurring in such places,

where unrestricted access is available to the public, are liable to be compensation by the insurer.

9. To us, it appears, that the public place is a place to which nobody can deny as a matter of right access to the others, or nobody had, as a matter

of fact, at the relevant time, or immediately prior thereto, sought to exercise the right of denial of access to the others. It is significant that the

definition of "public place" in Section 2(24) of the Motor Vehicles Act mentions that, even if the place is not a thoroughfare, it may still be a public

place, provided the public has got right of access thereto. Even though the Tribunal stated that the access to the place of accident was restricted by

licence, no evidence did, as a matter of fact, support this assumption. On the other hand, the indications in the evidence of PWs. 4 to 6 were to the

effect that there were no restrictions, no regulations, nor even any attempt to object to the entry of the public to this place.

10. Even otherwise, the deceased was a person engaged for work in the quarry. There is no evidence, not even an attempt to show that the lorry

entered the premises on permission. On the basis of this evidence, it appears to us, that the finding of the Tribunal, that the accident occurred in a

private place, and therefore the insurance company was not liable to compensate the claimants, is unsustainable. We should note, that in spite of

the fact that notices were served duly on the respondent-insurer, there is no appearance on behalf of the insurance company in these proceedings.

In spite of this, we examined the evidence with anxiety to see that the absence of the insurer shall not prejudice its case.

11. The appeal, therefore, has to be and is hereby allowed. The claimants are entitled to collect the amount of Rs. 15,000/-with interest from the

date of instituting of the proceedings, 21-10-1976, from the tenth respondent-insurer in discharge of its obligations under the contract of Insurance.

There will be no order as to costs.

12. Issue carbon copies of this judgment to counsel on both sides on usual terms.