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Nidumthottil Kadankot Kudirodan and Others Vs Smt. P.V. Kalliani Amma and Others

None

Court: High Court Of Kerala

Date of Decision: Feb. 27, 1990

Citation: (1991) 2 ACC 33

Hon'ble Judges: L. Manoharan, J; K.T. Thomas, J

Bench: Division Bench

Judgement

K.T. Thomas, J.

In an accident happened on 8-3-81, one M.P. Purushothaman sustained injuries and dies of those injuries. His widow

and children made a claim on the owner, driver and the insurer of bus KLO 5102 for compensation. The Motor Accidents Claims Tribunal

assessed a sum of Rs. 75,000/- as the compensation payable to the claimants, but the Claims Tribunal deducted 50% therefrom on the premise

that the accident happened on account of the composite negligence perpetrated by the bus driver and the driver of the tempo van (KLN 2667) in

which the deceased was men travelling. The claimants, widow and children of the deceased, have filed this appeal dissatisfied with the award.

2. The accident happened in this way: The tempo van was proceeding from south to north along National Highway No. 17. The bus was coming

from a bylane which converged into the National Highway at the place of occurrence. As the bus entered the National Highway, it collided with the

tempo van.

3. The deceased was aged around 36 when he died. Claimants gave evidence to show that he was doing wholesale business in eggs. The claims

Tribunal accepted the said evidence. But the Claims Tribunal found that his yearly income did not exceed Rs. 15,000/- The Tribunal further found

that the accident was the result of negligence on the part of both the drivers, as the driver of the bus got into the National Highway unmindful of the

vehicles plying then and the driver of the van was found negligent in having kept his wrong side.

4. Learned Counsel for the appellants contended that the claims Tribunal went wrong in finding that the accident was the consequence of

negligence on the part of the van driver also. We have examined the relevant evidence on that aspect. We have our own reasons to hold that the

Claims Tribunal erred in finding that there was composite negligence from the bus driver and van driver for causing the accident. As the broad case

is admitted by both sides that the bus was entering into the National Highway from a bylane, the degree of care, diligence and circumspection

which the bus driver should have adopted was of a far highway one. He is permitted to take his vehicle into the main road from a bylane only after

ensuring that his passage is clear and that there is no risk involved in taking the vehicle into the main road, since the vehicles plying on the main road

have the right of passage through the main road. As the accident is a collision between a vehicle which went into the main road from a bylane and

another vehicle which was already plying through the main road, the doctrine of res ipso loquitur heavily favours the van driver and raises a

presumption that the negligence was on the part of the bus driver. Of course, he is entitled to rebut the presumption. But no counter theory was

advanced by the owner and driver of the bus in the joint written statement filed by them, except saying that the van was proceeding through the

eastern side of the National Highway. R.W. 1 was the driver of the bus. Though he stuck to his theory that the van kept the eastern side of the

National Highway, his further answers have completely shattered the possibility of the van being driven through the wrong side of the road. This is

because R.W. 1 admitted that the spot of the bus where the van hit was the front right side of the bus. If as a matter of fact, the bus, after entering

into the main road, had turned to south and was then hit against by another vehicle which kept the eastern side of the main road, the spot of hit

would necessarily have been the front left side of the bus. When R.W. 1 was confronted with this aspect, he candidly admitted that the spot of hit

would not have been on the front right side of the bus, if the bus was driven in the manner suggested by him during examination.

5. Having analysed the evidence in the light of all probabilities and circumstances in this case, we have no manner of doubt in concluding that the

accident was entirely due to the negligence on the part of the bus driver. Accordingly we set aside the finding of the Claims Tribunal that the

accident was the result of composite negligence of the drivers of both the vehicles. In the light of our finding on this aspect It is unnecessary to

consider whether the Claims Tribunal went wrong in deducting the percentage on the premise of composite negligence of both the drivers.

6. Now we come to the question of quantum of compensation. The Claims Tribunal found the annual income of the deceased as Rs. 10,000/-. He

deducted 25% from out of the said income as necessary for the personal expenses of the deceased and assessed the loss of income on the

assumption that the balance of Rs. 7,500/- would go to the claimants. In fixing up the annual income of the deceased, the claims Tribunal has

improperly declined to take into account the individual income assessed by the Income Tax authorities for the assessment year 1978-79. Ext. A2 is

the assessment order relating to the individual income of the deceased for the assessment year 1979-80, It shows that the deceased had an annual

net income of Rs. 10,530/-. Ext. A3 is the assessment order relating to a firm called M/s P.C. Traders of which the deceased was partner having

35% share. In Ext. A3, deceased''s share of profit was assessed at Rs. 1,260/- for the assessment year 1980-81. Ext.A4 is the assessment order

relating to another firm called M/s Purushothaman & Co., in which the deceased had 50% share. Ext.A4 assessed the profit of the deceased for

the assessment year 1980-81 at Rs. 9.739/-. It appears to us that the Claims Tribunal has marginalised the individualised the individual income of

the deceased. This may be because Ext. A2 was for the assessment year 1978-79 whereas the accident occurred on 8-3-81. There is no reason

to ignore Ext. A2 for the purpose of Assessing the total income of the deceased. When that also is added to the possible income of the deceased,

it is reasonable to assume that the deceased would have had an income of Rs. 20,000/- per annum. As the Claims Tribunal deducted 25%

therefrom towards personal expenses of the deceased, there is nothing wrong in making a further deduction of another 25% therefrom which

amount may be necessary for augmenting the business further. Even then the share of the claimants from out of the income of the deceased would

have been Rs. 10,000/- per annum.

7. The Claims Tribunal fixed the multiplier at ten. According to us, the aforesaid fixation is patently unjust in view of the fact that the deceased died

at a relatively young age of 36, hale and hearty, that too white engaged in business dealings. Even after giving a margin for health hazards and other

imponderables in life, it is only just and proper to assume that the deceased should have continued to earn at the same level and rate for another 20

years. Therefore, the multiplier in this case should have been fixed as twenty. As the Claimants have not put forward any other calid counts for

assessment of compensation, we are constrained to fix the amount of compensation on the count of loss of income for the family as a consequence

of the death of the deceased. On a calculation the compensation with the date adverted to above, we arrive at a figure of Rs two lakhs. As the

claimants are getting the compensation amount as a lump sum, there is justification in making a further reduction. We hold that, in the circumstances

of this case, 15% can be reduced on the side score. The balance comes to Rs. 1,70,000/-. We have no reason to deny the claimants the benefit of

the aforesaid assessment.

8. In the result, we allow this appeal and modify the award in the following terms: Claimants are entitled to get a total compensation amount of Rs.

1,70,000/- from respondents 1 and 3 (owner and driver of bus KIC 5102) with interest at 6% per annum from the date of claim petition. We

direct the second respondent - insurance company to pay the said sum, after deducting the amount, if any paid already.

9. Appeal is disposed of in the above terms.