

(1990) 03 KL CK 0039

High Court Of Kerala

Case No: C. M. P. No. 4239/89 in M.F.A. No. 349/S4

M.K. Kunjappa Haji

APPELLANT

Vs

Vasudevan and
another

RESPONDENT

Date of Decision: March 1, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 11 Rule 1, Order 41 Rule 33, 30

Citation: (1990) 1 KLJ 622

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

Bench: Division Bench

Advocate: P. Ravindran, for the Appellant; P. K. Musa and Siby Mathew, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Manoharan, J.

During pendency of an appeal filed u/s 110-D of the Motor Vehicles Act 1939 the appellant filed a petition under Order XI Rule 1 of the CPC (for short "the Code") seeking leave of court to deliver interrogatories on one of the respondents. The appeal is against an award passed in favour of an injured claimant. The appellant is the owner of a bus which was involved in an accident on 18-6-1982 in which the first respondent sustained injuries. The Motor Accidents Claims Tribunal awarded Rs. 52,400/- as compensation. Against the said award the owner of the bus has filed the appeal. While assessing compensation, the Claims Tribunal took into account a certificate issued by a medical practitioner to the effect that the first respondent suffered permanent partial disability of 15% as a consequence of the accident. The appellant avers in the petition that after filing the appeal he got information that the claimant has secured employment as driver in the Armed Reserve Police, at

Malappuram from 11-3-1985, and that he is discharging his duties as such. According to the appellant, the evidence tendered on behalf of the first respondent to the effect : that he suffered permanent partial disability of 15%, in that there is permanent limitation of full flexion to his right hip joint cannot be believed in view of the fact that now he is employed as a driver in the Armed Reserve Police. Therefore; according to the petitioner, it has become necessary to deliver interrogatories on the first respondent.

2. The contention raised by the learned counsel for the first respondent is that, this court cannot grant leave for delivering interrogatories in appeal stage. The first objection is that, Order XI is not applicable to proceedings under the Motor Vehicles Act, and the second objection is that even if applicable leave for delivering interrogatories can be granted only in the trial stage.

3. It is true under Rule 21 of the Kerala Motor Accidents Claims Tribunal Rules (for short "Rule"), Order XI C. P. C. is not expressly made applicable to proceedings before the Tribunal. But Section 110-D of the Motor Vehicles Act confers right of appeal against the award of the Claims Tribunal. The appeal lies to the High Court. Section 110-D does not state the manner in which the appeal is to be disposed of. Therefore, the right of appeal will carry with it the applicability of the Rules of practice and procedure of the court with regard to its power to entertain an appeal. The decisions reported in [Srisailam Devastanam Vs. Bhavani Pramillamma and Others](#), and in *Velunni v. Vellakutty* (1989(2) KLT 227) (DB) support the said view. Therefore, if under the provisions of the Code, the appellate court has jurisdiction to grant leave to deliver interrogatories, the said jurisdiction can be exercised in appropriate cases notwithstanding the fact that Rule 21 of the Rules, does not make specific mention of Order XI.

4. The object of delivering interrogatories is to elicit facts from the opposite side in relation to the points in dispute. In *Janaki Saran Singh & Ors v Iswari Singh* ((1969(1 S.C.W.R. 163) it was held that, answers to interrogatories should be considered as particulars given in respect of the pleadings, and the object is to limit the enquiry at the trial to the matters set out in the particulars the Supreme Court further held : "Particulars given become part of the pleadings. Every party is bound by his pleadings unless he is allowed to amend them. To put it differently the intention of the particulars is to limit the generality of the allegations in the pleadings and thus to define the issues which have to be tried". Though it may appear on a strict interpretation that Order XI applies to trial of suits, the Order should receive liberal interpretation so as to serve the interest of justice: The limits of the exercise of this power is, the adherence to the rule of relevancy, propriety and fair play. In this context it is appropriate to refer to the decision in *Ammu Ammal v. Venkitadri Iyer*(1980 KLT 929), a learned single Judge of this court on an interpretation of Section 30 C. P. C held that the execution court has power to direct a party to answer interrogatories.

5. As per Order 41 Rule 33 of the Code the appellate court has power to pass any decree and make any order which ought to have been passed or make such further or other decree or order as the case may require." In terms of Rule 33, the appellate court has power to pass orders and decrees which the trial court ought to have passed as also such other further orders as the nature of the case may require. The said provision includes power to make incidental orders also. When such is the nature of the power conferred on the appellate court in a given case, if the appellate court comes to the conclusion that exercise of power under Order XI is necessary in the interest of justice, Rule 33 will enable the appellate court to exercise such powers. The answer sought to be elicited through interrogatories are relevant for the proper and effective adjudication of certain issues that arise for determination. With due regard to the facts averred in the affidavit leave sought has to be granted. Therefore the petitioner is granted leave to deliver the said interrogatories on the respondent. The petition is allowed.