(1992) 05 KL CK 0004

High Court Of Kerala

Case No: M.F.A. No. 753 of 1986

Sharala Augustine and Others		APPELLANT
	Vs	
K.K. Raveendran and Others		RESPONDENT

Date of Decision: May 30, 1992

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110, 110(1), 110A, 2(18), 92A

Citation: (1992) ACJ 1131 : AIR 1992 Ker 346

Hon'ble Judges: P.K. Shamsuddin, J; K.T. Thomas, J

Bench: Division Bench

Advocate: P. Viswambharan, for the Appellant; Siby Mathew and P. Radhakrishnan, Amicus curiae, for the Respondent

Judgement

Shamsuddin, J.
Petitioners-claimants in O.P. (M.V.) No. 347 of 1982 on the file of the Motor Accidents Claims Tribunal, Ernakulam are the Appellants. The 1st Appellant is the widow and other Appellants are the children of deceased Augustine, who died in a motor accident.

2. Briefly stated, the case of the claimants is as follows: Augustine was a medical representative. He was a passenger in stage carriage bus bearing registration No. KLZ 3058 on 26th November 1981. When the bus reached a place called ''Karingalikkadu'' on the route Angamali-Manjapra, it dashed against a wayside electric post and then fell into a paddy field on the right side. In that process, it also hit a stay wire of an electric transformer, with the result, the live wire came into contact with the stay wire. While Augustine attempted to come out of the bus, he got electric shock. The accident took place as a result of rash and negligent driving of the driver of the bus. Petitioners claimed Rs. 1,00,000 as compensation.

3. Respondents 1 and 2, who were the owner and driver of the bus resisted the claim. In the joint written statement filed by them, they contended that the driver

was not negligent and the accident occurred as the main leaf of the bus was broken. It was further averred that Augustine had already got out of the bus. It was when he tried to save the driver from the bus that he got electric shock. It was contended that in the circumstances, it cannot be said that the deceased died due to bus accident.

4. The 3rd Respondent Insurance Company also raised contentions similar to those raised by Respondents 1 and 2.

5. After considering the evidence, the Tribunal held that the accident took place as a result of the negligence of the 2nd Respondent driver. However, the Tribunal came to the conclusion that Augustine had come out of the bus and that it was when he attempted to save the driver of the bus that he came into contact with the live wire and got electric shock, which resulted in his death. The Tribunal took the view that in the circumstances, it cannot be said that the injury arose out of the use of the motor vehicle. Accordingly, the claim petition was dismissed. However, on Issue No. 3, the Tribunal entered a finding that if the death of Augustine arose out of the use of the motor vehicle, the claimants are entitled to a compensation of Rs. 71,200.

6. In this appeal, learned Counsel for the Appellants vehemently contended that the view taken by the Tribunal is wrong. In view of the importance of the question involved in the appeal, we appointed Sri B. Radhakrishnan as amicus curiae.

7. To appreciate the contentions raised by learned Counsel on both sides and the amicus curiae it would be profitable to quote the relevant portion of Section 110 of Motor Vehicles Act:

A State Government may, by notification in the Official Gazette constitute one or more Motor Accident Claims Tribunals (hereinafter referred to as Claims Tribunals) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising or both.

In Section 110A, which deals with the application for compensation, it is provided:

An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 110 may be made

(a) by the person who has sustained the injury; or

(aa) by the owner of the property; or

(b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

So, it is evident that in order to attract the provisions contained in Sections 110 and 110A, claims for compensation in respect of accidents involving the death of or bodily injury to persons should arise out of the use of motor vehicle.

8. The question is whether Augustine died in an accident "arising out of the use of motor vehicle" in the light of the proved facts in this case. The contention is that as Augustine got electric shock When he was involved in rescue operations after he came out of the bus, the accident cannot be said to have arisen out of use of motor vehicle. As indicated above, this contention found favour with the Tribunal. Though in the petition it was alleged that it was while Augustine was coming out of the bus that the accident took place, the evidence clearly establishes that the deceased died due to an electric shock while he was carrying on rescue operations. As can be seen from the award of the Tribunal, this was conceded by 1st Petitioner at the time of evidence. The evidence adduced by the claimants also shows that deceased was honoured With a posthumous award of "Utham Jeevan Raksha Pathak". In the circumstances, the finding of the Tribunal in this respect has to be upheld.

9. Learned Counsel for Appellants however contended that even accepting that finding as correct, it cannot be said that the case does not fall u/s 110 or Section 110A of Motor Vehicles Act. Learned Counsel submitted that on the admitted facts, Augustine died as a result of electric shock, while he was carrying on rescue operations and its relation to the accident cannot be said to be so remote as to take the case out of the expression ''death or bodily injury arising out of the use of motor vehicle'' in Sections 110 of Motor Vehicles Act.

10. Sri Radhakrishnan cited a catena of decisions in support of his argument that the case squarely falls within the expression "accident arising out of the use of motor vehicle". Learned Counsel for Respondent on the other hand argued that since the action of Augustine in carrying on rescue operation is a voluntary act, the maxim "volenti non fit injuria" would apply to the case and that therefore the Appellants are not entitled to any compensation. We shall now examine the validity of the contentions raised by learned Counsel.

11. It is a well known canon of interpretation that in interpreting a social welfare legislation, the Court will normally adopt an interpretation which would favour persons sought to be benefited by the legislation. Where the Courts are faced with a choice between a wider meaning which carries out what appears to have been the object of the legislature more fully and a narrow meaning which carries it out less fully or not at all, they will often choose the former (see Maxwell on the Interpretation of Statute, 12th Edition, page 92). This Court, has consistently adopted beneficial construction in such situations and held that the expression "use" in Section 110 of the Motor Vehicles Act should be given a Wide interpretation.

12. In Motor and General, Finance (India) Ltd. v. Mary Many and Ors. 1990 (2) KLT 660, a Division Bench of this Court observed that the word ''use'' in Section 110(1) of

the Act has been used in a wider sense and it covers all engagements of the motor vehicle, including driving, parking, keeping, stationary, repairing, leaving unattended on the road or for any other purposes. In Sarasakshy v. Krishnankutty 1991 (2) KLT 291 Anr. Division Bench of this Court held that a wider meaning has to be given to the words ''arising out of the use of the motor vehicle'' while considering Sections 110 and 110A of the Motor Vehicles Act.

13. The Supreme Court had occasion recently to consider the scope of the expressions ''use of vehicle'' and ''arising out of the use of vehicle'' in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . In that case, the interpretation of Section 92A of Motor Vehicles Act came up for consideration. There was a collision between a petrol tanker and a truck, as a result of which, the petrol tanker went off the road and fell on its left side at a distance of about 20 feet from the highway. The petrol contained in it leaked out and got collected nearby. An explosion took place in the said petrol tanker resulting in fire. A number of persons who had assembled near the petrol tanker sustained burn injuries and a few of them succumbed to the said injuries. The Respondent before the Supreme Court in that case is the mother of one of those died, as a result of such injuries. She filed a claim petition u/s 110 of Motor Vehicles Act. She also made a claim for compensation u/s 92A. Petitioners before the Supreme Court raised an objection with regard to the jurisdiction of the Claims Tribunal to entertain such petitions on the ground that explosion and fire resulting in injuries to the deceased could not be said to be an accident arising out of the use of a motor vehicle. The Claims Tribunal upheld their contention holding that the explosion and fire took place about 4 hours after the incident and had no connection whatsoever with the accident. On appeal to the High Court, a learned Single Judge held that the fact that at the material time the tanker was not being driven on the Highway, but was lying turtle on its side would make no difference and that vehicle, lying on the side of the Highway would be covered by the expression ''use'' in Section 92A of the Act and that compensation would be payable under no fault liability of Section 92A. Petitioners filed Letters Patent Appeal, but that was dismissed by a Division Bench of the High Court confirming the findings of the learned Single Judge. These findings were challenged before the Supreme Court. The Supreme Court rejected the contentions and observed as follows:

At the time when the petrol tanker collided with the truck on the national highway, it was being used for the purpose of transporting petrol. It cannot, therefore, be disputed that when the said collision took place, it was a motor vehicle as the said expression was defined in Section 2(18) of the Act. Did it cease to be motor vehicle after the collision with the truck on account of its lying turtle on its side at some distance from the road as a result of the said collision? In Our view, this question must be answered in the negative.

The Supreme Court then proceeded to consider the further question whether the explosion and fire which caused injuries to the deceased son of the Respondent can

be said to have taken place due to an accident arising out of the use of a motor vehicle viz., the petrol tanker and observed as follows:

...as compared to the expression ''caused by'', the expression ''arising out of'' has a wider connotation. This expression ''caused by'' was used in Section 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92A, Parliament, however, chose to use the expression ''arising'' out of which indicates that for the purpose of awarding compensation u/s 92A, the casual relationship between the use of the motor vehicles and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression ''arising out of the use of a motor vehicle'' in Section 92A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

The Supreme Court ultimately held that the explosion and fire resulting in the injuries which led to the death was due to an accident arising out of the use of the motor vehicle.

14. In Section 110 also, the expression used is ''accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles''. Section 110A also mentions of an "application for compensation arising out of ''an accident of the nature'' specified in Sub-section (1) of Section 110".

15. We are unable to accept the plea raised by learned Counsel for Respondents that the act of Augustine in carrying on rescue operations being a voluntary act, the claimants are not entitled to any compensation. In this context, reference may be made to the decision in Haynes v. Harwood 1935 LRKB 146 where a similar contention based on maxim "volenti non fit injuria" was raised. The Plaintiff in that case was a Police Constable. He was on duty inside a police station in a street in which, at the material time, there were a large number of people including children. On seeing the Defendants run away horse with a van attached coming down the street, the Police Constable rushed out and eventually stopped it, sustaining injuries in consequence thereof in respect of which he claimed damages. It was held that as the Police was under a general duty to intervene to protect life and property, the act of the constable and injuries sustained by him were the natural and probable consequences of the Defendants'' negligence and that the maxim ''volenti non fit injuria'' did not apply to prevent the Plaintiff from recovering the damages. Here also, in indulging in rescue operations, the deceased was involved in a chivalrous and commandable act which rightly earned him a posthumous award of ''Utham Jeevan Raksha Pathak''. He came into contact with live wire and lost his life in the process of saving people. It will be a travesty of justice if we deprive the legal representatives of the deceased of their right to claim compensation on the ground that the act of Augustine was voluntary. Augustine has acted as a responsible and

good citizen in carrying on rescue operations. But for the rash and negligent driving, the accident would not have occurred, Rescue operation and resulted death of Augustine are closely connected with the accident and we do not find any justification to deny compensation to the legal representatives of Augustine.

16. In N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, the Supreme Court cautioned the Courts/tribunals against non-suiting the claims based on technical pleas. In that case a stage carriage belonging to the Defendant was on a trip after nightfall. The bus hit an overhanging high tension wire resulting in 26 casualties of which 8 proved instantaneously fatal, The High Court found that the driver was driving the bus in a rash and negligent manner. In the course of the judgment, the Supreme Court observed as follows:

Road accidents are one of the top killers in our country, specially when truck and bus Drivers operate nocturnally. This proverbial recklessness often persuades the Courts, as has been observed by us earlier in other cases, to draw an Initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special, care to see that innocent victims do not suffer and Drivers and owners do not escape liability merely because of some doubt here and some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes.

17. In yet Anr. decision in Chadwick v. British Railways Board 1967 (1) WLR 912, a serious, railway accdient took place as a result of negligence of the Driver. Plaintiff''s husband went to, the scene of the accident and helped in the rescue activities. As a result of his experiences of that night, he became psychoneurotic and died later. It was held that the Defendants having by their negligence put passengers in peril, could reasonably have foreseen that someone would attempt to rescue those passengers and would suffer injury in the process. In that view, the Court held that the Defendants owed a duty to such rescuer and the Plaintiff is entitled to recover compensation.

18. We are of the view that the expression ''arising out of the use of the motor vehicle'' has to be given a wider meaning and so interpreted, it has to be held that the death of Augustine arose out of the use of motor vehicle. We therefore reverse the finding of the Tribunal, and hold that the legal representatives of Augustine are entitled to compensation u/s 110 of Motor Vehicles Act.

19. The Tribunal has held that in the event of a finding that the legal, representatives of Augustine would be entitled to compensation, compensation to which they would be entitled is Rs. 71,200. It has not been shown that the compensation assessed by the Tribunal is in any way on the high side. We therefore accept that finding and hold that the Appellants are entitled to a compensation of Rs. 71,200. It has come out in evidence that the policy was an act policy and the

liability of insurer in respect of a passenger is limited to Rs. 5,000. In the circumstances, the 3rd Respondent, Insurance Company is liable to pay only Rs. 5,000 and Respondents 1 and 2 would be liable to pay the balance of compensation.

20. Appellants 2 and 3 are minors. Both of them together are entitled to 2/3 shares in the compensation amount. Their share of compensation will be deposited in a Scheduled Bank during the period of their minority in the fixed deposit account. It would be open to the 1st Appellant, the guardian of minors to apply to the Tribunal for appropriate orders for withdrawal of interest accrued or any portion of the compensation amount for the necessity of the minors.

21. Before parting with the matter, we express our deep appreciation for the valuable assistance rendered by Sri B. Radhakrishnan by acting as amicus curiae and arguing the case with remarkable ability and brilliance.

M.F.A. is allowed as above with cost.