

Mini vs Binu

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Court : Kerala

Decided On : Apr-03-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/2456/2014

Appellant : MINI

Respondent : BINU

Judgement :

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947 MACA
NO. 2456 OF 2014 AGAINST THE AWARD DATED 18.10.2012 IN OPMV NO.51
OF 2009 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOLLAM
APPELLANTS/PETITIONERS 1 MINI AGED 33,W/O.LATE KRISHNAKUMAR,
ALLINKUNNATHU VEEDU, MUNDAKKAL, KOLLAM 2 AMAL KRISHNA AGED
15, S/O.LATE KRISHNAKUMAR, ALLINKUNNATHU VEEDU, MUNDAKKAL,
KOLLAM. BY ADV SAJU J PANICKER RESPONDENTS/RESPONDENTS

1 BINU, S/O.HAKKIM, SIBI MANZIL, KULAMATTAM, VARKALA, PIN - 695144 2 SHAKKEER S/O.MUHAMMED YOOSUF, SHAKKEER MANZIL, MANAMPOOR VILLAGE, CHIRAYINKEEZHU, PIN - 695304 3 THE DIVISIONAL MANAGER ORIENTAL INSURANCE, KOLLAM, PIN - 691001 4 PANKAJAKSHI AMMA W/O.UTHAMAN PILLAI, VILAYIL KIZHAKKATHIL, KOTTAPURAM, PARAVUR, KOLLAM, PIN - 691001

BY ADVS. C.R.JAYAKUMAR SRI.GEORGE CHERIAN SR. SMT.LATHA SUSAN CHERIAN-SC SMT.MINI GANGADHARAN SMT.K.S.SANTHI THIS MOTOR ACCIDENTS CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 4.3.2025, THE COURT ON 03.04.2025 DELIVERED THE FOLLOWING: C.R.

JUDGMENT

Dated : 3rd April, 2025 The petitioners in OP(MV).51/2009 on the file of the Motor Accidents

Claims Tribunal, Kollam are the appellants. They are the widow and minor child of late Krishnakumar who died in a motor vehicle accident that occurred on 26.3.2007. The OP was filed under Section 163A of the Motor Vehicles Act (in short, 'the M.V.Act'). (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal.)

2. According to the petitioners, on 26.3.2007 at about 7.15 p.m there

was a quarrel at the courtyard of the house of one Balakrishnan Nair. Balakrishnan Nair pushed the deceased to the road. At that time a stage carriage bearing registration No.KL-01-G6753 driven by the 2 nd respondent came through the road and the deceased happened to hit on the rear footboard portion of the bus. Accordingly, Krishnakumar sustained serious injuries and he succumbed to the injuries on 27.3.2007. The 1st respondent is the owner and 3rd respondent is the insurer of the bus. The 4th respondent is the mother of the deceased. According to the petitioners, since the deceased Krishnakumar died due to the use of the offending stage carriage, they are entitled to get compensation from respondents 1 to 3 under Section 163A of the M.V. Act.

3. The 3rd respondent/insurer who alone contested the case contended that there was no accident involving the stage carriage, that police have not filed any charge-sheet against the 2nd respondent and that the charge-sheet was filed against Balakrishnan Nair for the offence under Section 304 IPC. It is further alleged in the written statement that in connection with the dispute between the deceased Krishnakumar and his brother-in-law, his brother-in-law physically lifted the deceased and threw him to the road and at that time, head of the deceased happened to hit on the tarred road and that is how he died.
4. The evidence in the case consists of the oral testimony of PW1 and Exts.A1 to A11. After evaluating the evidence on record, the Tribunal dismissed the petition on the ground that Krishnakumar died not because of the injuries sustained in the accident arising out of the use of the bus. Aggrieved by the above finding of the Tribunal the petitioners preferred this appeal.
5. Now the point that arise for consideration is the following. Whether the deceased Krishnakumar died due to the use of the stage carriage bearing registration No. KL-01/G 6753 ?
6. Heard Sri.Saju J.Panicker, the learned counsel for the appellants and Smt.Latha Susan Cherian, the learned Standing Counsel.
7. According to the learned counsel for the petitioners, Krishnakumar died because of the head injury sustained as his head hit against the rear footboard portion of the stage carriage and as such, the death occurred due to the use of the motor vehicle and as such the Tribunal was not justified in dismissing the claim petition. On the other hand, the learned Standing Counsel supported the finding of the Tribunal.
8. In support of his argument, the learned counsel for the petitioners has relied upon some decisions. The beneficial object of Section 92A of the M.V.Act, was discussed by the Hon'ble Supreme Court in the decision in Shivaji Dayanu Patil and Ors. v. Vatschala Uttam More, AIR 1991 SC 1769. In paragraph

35 the Apex Court held that :

This would show that as compared to the expression caused by, the expression arising out of has a wider connotation. The expression caused by was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92- A, Parliament, however, chose to use the expression arising out of which indicates that for the purpose of awarding compensation under Section 92-A, the causal relationship between the use of the motor vehicle 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 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

9. In the decision in Rita Devi v. New India Assurance Co.Ltd, 2000

(5) SCC 113, the claimants were the legal heirs of an autorickshaw driver who was murdered and the autorickshaw was stolen and it was never recovered. Even then, the Hon'ble Supreme Court held that the murder of the deceased was due to an accident arising out of the use of the motor cycle.

10. In the decision in New India Assurance Company Ltd., and

Another v. Remya and Others, 2011 (4) KHC 638, while a minor girl was travelling in an autorikshaw, a beer bottle thrown from some other vehicle hit her face and consequently she suffered injuries. In that case, a Division Bench of this Court held that the accident arose due to the use of the motor vehicle. In paragraph 24 the Division Bench held that :

If that be the situation in Section 140 of the MV Act, a still wider interpretation has necessarily got to be given when Courts consider this

identical expression in Section 163A of the MV Act. Section 140 of the MV Act deals with a specified amount which even allegedly is not complete compensation for the loss suffered. Under Section 140 of the MV Act and its predecessor provisions the principle of no fault liability was introduced into the Indian law relating to compensation for motor accidents. Now under Section 163A of the MV Act the relief is not interim and is not to be adjusted towards the compensation to be determined finally. It is in the context the Deepal Girishbhai Soni (supra) states that Section 163A is a code by itself and is introduced by way of a social security scheme. This court trying to give life and meaning to the provision of Section 163A must necessarily give the expression as wide an interpretation as is possible to serve the cause of a social security scheme which Section 163A is declared to be in Deepal Girishbhai Soni (supra). In the given context therefore it is essential that the expression arising out of must be given a wide and expensive meaning as to take within its beneficent scheme all accidents connected with the use of motor vehicle.

11. In the decision in United India Insurance Co.Ltd., v.

Thankamma and Others, 2011 (3) KHC 488, the deceased Vasudevan was driving his jeep and he stopped the same due to some mechanical problems. Thereafter there was an altercation between Vasudevan and one of the passengers in the jeep who stabbed Vasudevan to death. The question that arose was whether the dependents of the deceased Vasudevan were entitled for compensation under

Section 163A of the Motor Vehicles Act. The Division Bench of this Court held

that the murder arose out of the use of the motor vehicle. In paragraph 10 and 11, the Division Bench held as follows :

A conjoint reading of the two sub-clauses of section 163A of the Motor Vehicles Act shows that legal heirs or victim are entitled to claim

compensation from owner/Insurance Company for death or permanent disablement suffered due to the accident arising out of the use of the motor vehicle, without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants, that death or disablement was caused due to an accident arising out of the use of the motor vehicle then they will be entitled for payment of compensation. Therefore, the point to be considered in this case is what is the actual legal impact of the words "death or disablement due to accident arising out of the use of the motor vehicle". In *Rita Devi V. New India Assurance Co. Ltd.* (2000 (2) KLT 526 (SC)) the Apex Court held that if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder. The following decisions have been referred to in *Rita Devi's* case (Supra):- *Challis V. London & South Western Railway Company* (1905(2) King's Bench 154), *Nisbet V. Rayne & Burn* (1910) 1 KB 689 and *Board of Management of Trim Joint District School V. Kelly* (1914 AC 667). In *Rita Devi's* case (Supra) a driver of the auto-rickshaw was killed and vehicle was stolen by some person. The Apex Court held therein that it was an accidental murder arising out of the use of the vehicle and that the claimants were entitled to compensation from the owner and insurer of the offending auto-rickshaw. Applying the principles laid down in the above decision, in the facts of the present case it has to be held that the murder was not a pre-planned murder and that the same was only an accidental murder. Deceased Vasudevan was the driver of the vehicle in question. He stopped the vehicle due to mechanical defect and an altercation ensued between the deceased and Sunny and Sunny suddenly stabbed deceased Vasudevan. Thus it can be seen that Sunny had no intention to cause the

death of Vasudevan. That being so, it has to be taken that it is an accidental murder and not an intentional one. It follows that the murder of the deceased Vasudevan was due to an accident arising out of the use of the vehicle. That being so, the Tribunal is rightly came to the conclusion that the claimants are entitled to compensation as claimed by them..... .

12. In the decision in Kalim Khan and Others v. Fimidabee and

Others, 2018 (4) KHC 690, when victim was returning home through a field, a stone came and fell on the head resulting in his death. The flying of the stone was due to a blasting operation carried out by the tractor. In the above circumstances, the Hon'ble Supreme Court held in paragraph 24 as follows :

It may be reiterated here that the causal relationship should exist between violation and the accident caused. There has to be some act done by the person concerned in causing the accident. The commission or omission must have some nexus with the accident. The word 'use' as has been explained by the authorities of this Court need not have an intimate and direct nexus with the accident. The Court has to bear in mind that the phraseology used by the legislature is 'accident arising out of use of the motor vehicle. The scope has been enlarged by such use of the phraseology and this Court taking note of the beneficial provision has placed a wider meaning on the same. There has to be some causal relation or the incident must relate to it. It should not be totally unconnected. Therefore, in each case what is required to be seen is whether there has been some causal relation or the event is related to the act.

13. In the decision in Sukumaran v. R.C.Ibrahim and Ors.,

MANU/KE/0727/2023, the vehicle in which the claimant was travelling and which he owned, collided with a lorry that was parked. It was found that the accident occurred due to the negligence of a driver of the vehicle of the claimant. In

paragraph 26, a learned Single Judge held that :

As we have already seen, in a claim under Section 163A of the M.V.Act, the claimant shall not be required to plead or establish that the death or permanent disablement, in respect of which the claim has been made, was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned, or of any other person as envisaged under Section 163A(2) of the M.V.Act.

14. On a perusal of the above decisions, it can be seen that in a claim

under Section 163A of the M.V.Act, the claimant is not required to plead or establish that there was negligence on the part of the vehicle concerned. Even though there was no negligence on the part of the driver, if there is some causal connection between the accident and the use of the vehicle, a claim under S.163A will lie. Further, even though the accident should be connected with the use of the motor vehicle, the said connection need not be direct and immediate. In the instant case, the deceased was pushed by his brother-in-law towards the road, in pursuance to an altercation and at that time, his head hit on the rear side footboard of the bus belonging to the 1st respondent. Therefore, in the instant case also, it can be seen that though there was no negligence on the part of the driver of the bus, since deceased died as his head hit on the footboard of the bus, it cannot be held that the accident has no direct and immediate connection with the use of the bus. Definitely, the injuries sustained by the deceased and his consequent death has connection with the use of the bus.

15. In the above circumstance, in the light of the above discussions as

well as the decisions referred above, it is to be held that in the instant case, the accident arose out of the use of the motor vehicle and as such the respondents are liable to pay compensation to the legal representatives of the victim under Section 163A of the M.V.Act. Therefore, the Tribunal was not justified in dismissing the claim petition on the ground that it is not maintainable.

16. In this case, the monthly income of the deceased claimed by the

petitioners is Rs.3000/- and the annual income will come to Rs.36,000/-. The accident occurred in the year 2007. As per the decision of the Hon'ble Supreme Court in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd. [2011 (13) SCC 236], the notional income of a Coolie during the year 2007 will come to Rs.6000/-. The annual outer income limit for entertaining a claim petition under Section 163A of the Motor Vehicles Act is Rs.40,000/-.

17. In the above circumstances, the notional income of the deceased for

the purpose of assessing compensation under Section 163A of the M.V.Act is fixed at Rs.40,000/-. As per the Second Schedule to the M.V.Act, the compensation payable to the dependents of the persons within the age group 35-40 having annual income of Rs.40,000/- is Rs.6,00,000/-. Out of which, one-third of the income is to be deducted towards personal and living expense of the deceased and the balance will come to Rs.4,00,000/-. Along with the same, the petitioners are entitled to get a sum of Rs.2,000/- towards funeral expense, Rs.2,500/- towards loss of estate and Rs.5,000/- towards loss of consortium. Therefore, the petitioners are entitled to get a total sum of Rs.4,09,500/- (400000 + 2000 + 2500 + 5000). The 3rd respondent is directed to pay the same with interest @ 8% per annum from the date of petition till deposit/realisation,

excluding interest for a period of 557 days, the period of delay in filing the appeal, with proportionate costs, within a period of two months from today.

18. On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioners 1 & 2 and in the ratio 2:1, excluding court fee payable, if any, without delay, as per rules. Sd/- C.Pratheep Kumar, Judge MrCs/24.3.25

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