

Sreekumar vs Mrithula

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Court : Kerala

Decided On : Jan-31-2024

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : MACA/713/2013

Appellant : Sreekumar

Respondent : Mrithula

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA,
1945 MACA NO. 713 OF 2013 AGAINST THE AWAARD DATED
30.10.2012 IN OPMV NO.1371 OF 2007 OF I ADDITIONAL MOTOR
ACCIDENT CLAIMS TRIBUNAL,KOLLAM APPELLANT/PETITIONER:
SREEKUMAR S/O.SREEDHARAN NAIR,SREE NILAAM,NEAR
KOCHUVEETILTEMPLE,MEMANA WARD,OACHIRA,KOLLAM. BY
ADVS. SRI.PRATHEESH.P SMT.CHITHRA.S.BABU
RESPONDENT/RESPONDENTS: 1 MRITHULA
W/O.ANILKUMAR,THATTARUDE MEENATHUVILAYIL,PAVUMBA
NORTH.PO,KARUNAGAPPALLY. 2 VIJAYAN PILLAI

NILAKAL,PAVUMBA NORTH.P.O,KARUNAGAPPALLY. 3 NATIONAL INSURANCE CO.LTD KOLLAM REPRESENTED BY ITS MANAGER. BY ADV SRI.RAJAN P.KALIYATH THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2 :

JUDGMENT

The appellant was the petitioner in O.P.(M.V) No.1371/2007 on the files of the Additional Motor Accidents Claims Tribunal, Kollam. The said claim petition was submitted by him seeking compensation for the injuries sustained to him in a motor accident that occurred on 12.05.2007.

2. According to the appellant, the accident occurred when the

Maruti car bearing registration No.KL-2/X 9165, in which the appellant was travelling, hit a lorry that came from the opposite direction at excessive speed. The car was being driven by the 2nd respondent, owned by the 1st respondent and was insured with the 3rd respondent. The appellant was a Naik in Signal Core of the Indian Army with a monthly income of Rs.7,000/-. According to him, he sustained serious injuries and the claim petition was submitted in such circumstances.

3. The 3rd respondent filed a written statement admitting the coverage of policy for the car, but they denied the negligence on the part of the 2nd respondent. They contended that the accident occurred :3 : due to the negligence of the driver of the lorry, and they were not made parties to the claim petition.

4. The evidence in this case consists of oral testimony of

PW1, and as documentary evidence, Ext.A1 to A11 were marked from the side of appellant. From the side of the respondents Ext.B1, the FI statement of the appellant was marked. After the trial, the Tribunal came to the conclusion that the accident occurred due to negligence on the part of the driver of the lorry, which remains untraceable. The quantum of compensation was fixed as Rs.1,42,100/-. However, as it was found that the appellant could not prove negligence on the part

of the 2nd respondent in driving the car, the claim petition was dismissed. This appeal is submitted by the appellant in such circumstances.

5. Heard, Sri.Pratheesh P, the learned counsel appearing for the appellant and Sri.Rajan P Kalliyath, the learned counsel appearing for the 3rd respondent, insurer.

6. The first question to be considered is whether the

exoneration of the 2nd respondent from the liability is sustainable or not. It is discernible from the observations made in the award that the ultimate finding of the Tribunal on the question of negligence was that :4 :

the accident occurred due to the rash and negligent driving of the driver of the lorry, who was not a party to the proceedings. It is also evident from Ext.A4, the final report submitted by the police, that, in the investigation, the driver of the lorry was found to be negligent, but neither the lorry nor the driver could be traced out. Therefore, Ext.A4 was submitted with a conclusion that the accused could not be identified.

7. While arriving at the conclusion that the appellant failed to

establish any negligence on the part of the 2nd respondent, the Tribunal mainly relied on Ext.B1 FIS produced by respondent given by the appellant before the police immediately after the accident. As per the contents of the same, the negligence was attributed only against the driver of the lorry, and there were no statements in the same against the driver of the car, the 2nd respondent herein. However, the crucial aspect to be noticed is that, in column 28 of the claim petition, while narrating the manner in which the accident occurred, the appellant raised a specific contention that the car was being driven by the 2nd respondent at the relevant time in a rash and negligent manner so as to endanger human life and it hit against the lorry which

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was coming at a hectic speed. Thus, the negligence was specifically attributed to the driver of the car as well as the driver of the lorry. He filed a proof affidavit reiterating the said contentions, and in cross-examination, he denied the suggestion put to him that the driver of the car was not negligent. As regards the Ext.A1/B1 FIS, given by him before the police, he explained that, at the time when the said statement was recorded, he was not in a proper conscious mind as he was undergoing treatment. However, the Tribunal, merely by placing reliance upon the same, held that the appellant did not attribute any negligence upon the driver of the car.

8. After carefully going through the entire materials, I do not

find any justification in upholding the finding of the Tribunal. Of course, it is true that, in the FIS given by the appellant before the police, the negligence was mainly attributed to the driver of the lorry. As far as the FIS is concerned, the same cannot be treated as an absolute piece of evidence, as it is a well-settled position of law that the same cannot be treated as an encyclopedia of the entire sequence of events which led to the incident. It is also true that the police conducted an investigation and found negligence on the part of the driver of the lorry, but no one

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could be charge-sheeted as the driver of the lorry could not be traced out. However, merely because of that reason, the appellant cannot be denied the claim of compensation. When considering the nature of evidence adduced by the appellant by getting himself examined as PW1, I am of the view that the possibility of the driver of the car being also responsible for the accident, along with the driver of the lorry, cannot be ruled out. It is a well-settled position of law as per the

judgment rendered by the Honourable Supreme Court in Khenyei v.

New India Assurance Co. Ltd., (2015) 9 SCC 273 that, in the case of composite negligence, the injured/victim can institute the proceedings for compensation against all the tortfeasors or anyone among them. In the said decision, it was also

held that the impleadment of all the joint tortfeasors is not necessary in a proceeding to determine the claim in this regard. Here in this case, it is evident from the records that, even though another vehicle was involved, the said vehicle could not be traced out despite all efforts and the police submitted a final report in this regard. However, merely because of that reason, the appellant cannot be denied compensation particularly because this is a case of composite negligence where the evidence now available on record

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would clearly indicate some extent of negligence on the part of the 2nd respondent in driving the car. Therefore, the 2nd respondent qualifies to be termed as a joint tortfeasor and in such circumstances, in the light of the principles laid down by the Honourable Supreme Court in *Khenyei* (supra), the appellant is entitled to proceed against the 2nd respondent, the driver of the vehicle, and the owner as well as the insurer of the said vehicle for the entire compensation. Under no circumstances, can such a claim be treated as not maintainable. In such circumstances, I am of the view that as the materials available on record would indicate some negligence on the part of the 2nd respondent in causing the accident, the respondents herein are jointly and severally liable to pay the compensation receivable by the appellant. Since the 3rd respondent admits the coverage of policy for the car, they are liable to indemnify the 1st and 2nd respondent by depositing the amount of compensation.

9. The next aspect to be considered is the quantum of

compensation. The tribunal has already determined the compensation as Rs.1,42,100/-. The learned counsel for the 3rd respondent insurer seriously challenges the quantum of compensation mainly under the :8 :

head of disability. It was pointed out that, from the materials now available on record, there is nothing to indicate that the appellant had suffered any physical disability, but despite the same, the tribunal awarded an amount of Rs.39,600/-by, taking the physical disability as 6%. After perusing the records, I find force in the said contention. Of course, he sustained serious injuries in the accident, but there

is absolutely no evidence to show that such injuries resulted in any physical disablement. The appellant did not care to subject himself to evaluation of the physical disability by a Medical Board as well. Evidently, the tribunal found that there was disability merely on the reason that there was a visible scar on his leg due to the injuries and subsequent surgery. It was also found that when he stepped down from the witness box, the appellant experienced slight difficulty. However, that by itself cannot be a reason to conclude that the appellant had physical disability. In such circumstances, I am of the view that, in the absence of any documents indicating physical disability, the tribunal should not have granted any compensation for the same. Therefore, the award of the tribunal granting compensation for physical disability is set aside. The rest of the amounts awarded by

:9 : the tribunal appear to be reasonable and, therefore, there is no scope for further modification.

10. In the result, this appeal is allowed. The finding of the

tribunal holding that the appellant could not prove the negligence on the part of the 2nd respondent is set aside. It is held that, the records would indicate that the 2nd respondent also contributed to the accident and since this is a case of composite negligence, respondents 1 to 3 are jointly and severally liable to pay the compensation to the appellant, as the 2 nd respondent being one of the joint tortfeasors. The 3rd respondent, being the insurer of the said vehicle, is found liable to pay the entire compensation. The quantum of compensation is fixed as Rs.1,02,500/- (142100-39600) (Rupees one lakh two thousand and five hundred only). The said amount shall be deposited by the 3rd respondent with interest at the rate of 7.5% per annum from the date of petition till realisation with proportionate cost within a period of three months from the date of receipt of a copy of this judgment. It is further ordered that the claimant shall furnish the details of the PAN card, Aadhar card and bank details to enable the 3 rd respondent to make the deposit as ordered above within a period of two months from the date of receipt of a copy of this judgment. In case he fails to furnish

: 10 : the said details, it shall be open for the insurance company to deposit the said amount before the tribunal. Sd/- ZIYAD RAHMAN A.A. JUDGE rpk/ncd

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