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A.G.Baby vs Eldho

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Court : Kerala

Decided On : Jan-31-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : MACA/968/2016

Appellant : A.G.Baby

Respondent : ELDHO

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN TUESDAY, THE 31ST DAY OF JANUARY 2023 / 11TH MAGHA, 1944 MACA NO. 968 OF 2016 AGAINST THE ORDER/JUDGMENT OPMV 355/2012 OF DISTRICT COURT & SESIONS & MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA APPELLANT/PETITIONER: A.G.BABY AGED 51 YEARS, S/O.GEORGE, ARAPPATHANATH HOUSE, PALLIKKUNNU, EACHOME POST, WAYANAD DISTRICT. BY ADV SMT.CELINE JOSEPH RESPONDENTS/RESPONDENTS:

ELDHO, POLICE DRIVER, PANAMARAM POLICE STATION, WAYANAD DISTRICT. DIRECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM. KERALA STATE INSURANCE DEPARTMENT, REPRESENTED BY DISTRICT OFFICER, DISTRICT INSURANCE OFFICE, KALPETTA NORTH P.O., WAYANAD DISTRICT. BY ADVS. SRI.MANSOOR.B.H. SRI.K.M.FAISAL - GP THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2:

DEVAN RAMACHANDRAN, J.

========== M.A.C.A.No. 968 of 2016 ========== Dated this the 31st day of January, 2023

JUDGMENT

The appellant is stated to have been driving a car from Panamaram to Kambalakkad and that when he reached Pachilakkad, a police jeep driven by the 1 st respondent rammed into the car from behind, eventually causing it to capsize, leading to injuries to him and co-passengers.

2. It transpires that, based on the First Information

Statement given by one of the co-passengers in the car driven by the appellant, a case was registered against him for rash and negligent driving as C.C.No.3/2011 on the files of the Judicial First Class Magistrate Court I, Mananthavady. After investigation, the investigating officer laid charge against the appellant and the case was taken to trial, finally ending in an

order of acquittal in his favour.

3. In the meanwhile, the appellant filed a complaint against the 1st respondent, which was taken cognizance of and :3:

registered as C.C.No.513/2011 by the aforementioned Court; but in a few months time, in a Lok Adalat, he allowed the 1 st respondent to compound his offences, leading to an order being issued by the Adalath acquitting the said respondent, under Section 320 (8) of the Code of Criminal Procedure (Cr PC).

4. In the meanwhile, pending the afore events, the

appellant preferred OP(MV) 355/2012 before the Motor Accidents Claims Tribunal, Wayanad, Kalpetta, (the 'Tribunal' for short) against the respondents, alleging that the 1 st respondent was rash and negligent in having caused the accident and thus seeking compensation to the extent of Rs.6,22,000/-, limited to Rs.3,00,000/-; praying that the 3 rd respondent be ordered to honour the same, since it admittedly had issued a contract of insurance in favour of the police jeep involved in the accident. The Tribunal, however, dismissed the OP(MV) through an Award dated 31.05.2014, primarily relying upon the aforementioned Order of the Lok Adalat acquitting the 1st respondent, holding that same would lead to an irresistible inference that he was not negligent.

5. The appellant assails the impugned Award of the Tribunal on various grounds, including that the Order of the :4:

Lok Adalat could not have been interpreted in such a fashion because it was issued under Section 320(8) of the Cr PC, which postulates that the offences against the 1 st respondent have been compounded, though he is technically construed to have been acquitted under its mandate.

6. I have heard Smt.Celine Joseph - learned counsel for the

petitioner; Sri.B.H.Mansoor - learned counsel appearing for respondent no.1 and Sri.K.M.Faisal - learned Government Pleader appearing for respondents 2 and 3. With the consent of both sides, I dispose of this appeal on the basis of the materials and evidence on record, which have been handed over across the Bar by them, who also agreed that they be relied upon and

judgment delivered on its Bars.

7. There is a great degree of dispute between the parties as to how the accident occurred and who was responsible.

8. As I have said above, originally, an accusation was made against the appellant by one of his co-passengers that he had driven the vehicle in a rash manner and this lead to Ext.B1 - FIR

being registered against him. Thereupon, C.C.No.3/2011 was registered against the appellant, but during its trial, the witnesses turned hostile to the prosecution, and he was :5: acquitted, which is evident from Ext.A4 order of the said Court.

9. Even prior to the acquittal of the appellant, probably

being alerted by the Charge Sheet and C.C.No.3/2011 - which has been marked as Ext.B2 - the appellant preferred Ext.A1 complaint against the 1st respondent on 01.01.2011, which was taken to the files of the Judicial First Class Magistrate Court I, Mananthavady, as evident from Ext.A2 order dated 22.07.2011 and registered as C.C.No.513/2011. The appellant, thereafter, chose to allow the 1st respondent to compound the offence under the provisions of Section 320 of the Cr PC; and consequently, Ext.B3 order was issued by the Adalat on 12.01.2013, acquitting the said respondent under the purlieus of Section 320(8) of the Cr PC.

10. When the matter was then considered by the Tribunal,

though it quantified the damage that may have been allowable in favour of the appellant as being Rs.1,73,449/-, it chose to dismiss the Original Petition, finding that, neither the accident, nor the negligence on the part of the 1st respondent, have been properly proved. For this, the Tribunal relied heavily on Ext.B3

order of the Lok Adalat acquitting the 1 st respondent in

C.C.No.513/2011; and thus holding that he cannot be found :6: guilty of having caused the accident.

11. Smt.Celine Joseph - learned counsel for the petitioner,

vehemently argued that the Tribunal heard in interpreting Ext.B3 because, even though, technically, the 1 st respondent may have been acquitted, it is a case where he had been permitted to compound the offences charged against him, which clearly postulates and presupposes that he had caused the

accident in question. She then argued that, had the Tribunal given her client necessary opportunity to adduce oral evidence, he could have done so; and that this was further more important because, Ext.A4 order of the Magistrate Court in C.C. No.3/2011 could chronicle the manner in which the accident was caused and how respondent no.1 was guilty of negligence.

12. In opposition, Sri.B.H.Mansoor - learned counsel for

the 1st respondent, submitted that the afore arguments of the appellant are conjectural and bordering on being mischievous because, there is not even a whisper anywhere that he had given the list of witnesses on his side, or that the Tribunal had not allowed him to examine them. He argued that the records would clearly show that no such list was ever filed and, therefore, that the Tribunal had no other option, but to rely

upon the marked documents on record and to dismiss the original petition. He predicated that, going by the evidence on record, particularly Ext.B3 - Order of the Lok Adalat in C.C.No.513/2011, his client could never have been found guilty of any negligence, much less of having caused the accident, and, therefore, that this appeal is unnecessary and untenable.

13. Sri.K.M.Faisal - learned Government Pleader, adopted

the afore submissions of Sri.B.H.Mansoor, arguing that the claim now put up by the appellant is an experimental one, especially because it was he who had caused the accident, as evident from Ext.B1 - First Information Report and Ext.B2 - Charge Sheet in C.C.No.3/2011. He thus prayed that this appeal be dismissed.

14. When I analyse the afore rival submissions on the touch

stone of various documents and evidence on record, I must certainly be aware that jurisdiction of this Court is limited when it comes to the appreciation and evaluation of contested facts. Going by the evidence on record, originally, the appellant was the accused in C.C.No.3/2011 on the files of the Judicial First Class Magistrate Court I, Mananthavady and this was on the basis of the First Information Report given by one of the co-

:8: passengers in his car. This lead to Ext.B1 - FIR being registered, and Ext.B2 - Charge Sheet settled against him, but when it came to trial, as Ext.A4 shows, he was acquitted, because the witnesses in the said case turned hostile to the prosecution.

15. In the meanwhile, the appellant filed a complaint

against the 1st respondent, leading to the Judicial First Class Magistrate Court I, Mananthavady to register C.C.No.513/2011 and had the said case gone to trial, he certainly would have been in a position to lead evidence, including by citing witnesses. However, in the meanwhile, for some reason, he permitted the 1st respondent to compound the offences, leading to Ext.B3 order being issued by the aforesaid Court under Section 320(8) of the Cr PC.

16. The germane question, therefore, which arises is as to the impact of the provisions of Section 320(8) of the Cr PC.

17. It is ineluctable, Section 320 of the Cr PC deals with

compounding of offences, and in sub-section (8) thereof, it provides that where any such offences are compounded, it would have been the effect of acquittal of the accused. As seen above, the Tribunal relied upon Ext.B3 to hold that, since the 1 st :9: respondent has been acquitted, it must be presumed that he is not guilty of any of the offences charged against him; and therefore, that no negligence can be proved against him. However, the question is whether the provisions of Section 320(8) of the Cr PC would operate in such a fashion.

18. This Court does not intend to speak any further on the

impact of Section 320(8) of the Cr PC at this stage, since I am certain that without an enquiry into this, the findings of the Tribunal recorded in the impugned order cannot be granted full imprimatur. In fact, the respondents do not oppose this, though they prayed that the Tribunal be ordered to hear them and consider all precedents to be cited by them.

19. When I say as afore, I am fully cognizant of the

submissions of Smt.Celine Joseph, that her client must be ordered to be given necessary opportunities by the Tribunal to leave further evidence. I am afraid that this is not something that this Court will be justified in affirmatively ordering because, since I intend to remit this matter to the said Tribunal, it will be up to it to decide all aspects, as are warranted by law. This is more so because, in spite of the assertion of Smt.Celine Joseph, that her client was not able to lead evidence before the

: 10 : Tribunal, there is nothing to establish the same, except what has already been stated. Therefore, should the parties approach the Tribunal, consequent to the remand that I propose herein, it will be up to it to decide appositely of allowing them further opportunities. Resultantly, and for the sole reason above, I allow this

appeal and set aside the impugned order; with a consequential direction to the Tribunal to reconsider OP(MV) No.355/2012, adverting specifically to the evidence on record and after giving necessary opportunities of hearing to both sides. This shall be done as expeditiously as is possible but not later than six months from the date of receipt of a copy of this judgment.

Should any of the parties seek further opportunity of leading fresh evidence before the Tribunal, it will be up to it to decide whether it should be allowed; and if it choose to do so, then the afore time frame will stand extended by a further period of three months. Sd/- DEVAN RAMACHANDRAN JUDGE anm

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