

Baburaj Vs. Valsa George

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Court : Kerala

Decided On : Mar-10-2015

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Baburaj

Respondent : Valsa George

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA TUESDAY, THE 10TH DAY OF MARCH 2015 19TH PHALGUNA, 1936 MACA.No. 444 of 2014 ()
----- AGAINST THE AWARD IN OPMV3201998 of M.A.C.T., NEYYATTINKARA DATED 04-06-2002 APPELLANT/1ST RESPONDENT: ----- BABURAJ CHEMMANKALA KAMALAVILASOM, NADOORKOLLA, KOLLAYIL CHAIKOTTUKONAM P.O., NEYYATTINKARA REPRESENTED BY THE POWER OF ATTORNEY HOLDER LEELA D/O.RAJAMMA, AGED 37 YEARS, ONAMKODU CHAIKOTTUKONAM P.O., THIRUVANANTHAPURAM. BY ADVS.SRI.R.T.PRADEEP SRI.P.BIJIMON RESPONDENTS/APPLICANTS & 2ND AND 3RD RESPONDENTS: ----- 1. VALSA GEORGE W/O.LATE GEORGE NADAR, RENI COTTAGE, NADOORKOLLA KOLLAYIL, AMARAVILA P.O. NEYYATTINKARA-695121. (R1 DELETED FROM THE ARRAY OF PARTIES AT THE RISK OF THE APPELLANT VIDE

ORDER

DATED 06/03/2014 IN IA7462014 IN MACA4442014) 2. SAM GEORGE S/O. LATE GEORGE, RESIDING AT -DO- -DO-. (R2 DELETED FROM THE ARRAY OF PARTIES AT THE RISK OF THE APPELLANT VIDE

ORDER

DATED 06/03/2014 IN IA7462014 IN MACA4442014) 3. RENI GEORGE S/O. LATE GEORGE RESIDING AT -DO- -DO-. (R3 DELETED FROM THE ARRAY OF PARTIES AT THE RISK OF THE APPELLANT VIDE

ORDER

DATED 06/03/2014 IN IA7462014 IN MACA4442014) MACA NO.444/2014 2 4. ANIL KUMAR @ MONY PANANGOTTUKONAM PUTHENVEEDU, NADOORKOLLA, KOLLAYIL AMARAVILA P.O., NEYYATTINKARA.695121 5. THE MANAGER NEW INDIA ASSURANCE COMPANY LTD. SREE HARI BUILDINGS, NEAR BUST STAND JUNCTION MAIN ROAD, NEYYATTINKARA, 695121. R4 BY ADV. SRI.S.RAJEEV R4 BY ADV. SRI.K.K.DHEERENDRAKRISHNAN R5 BY ADV. SRI.KKM.SHERIF R5 BY ADV. SRI.LAL K.JOSEPH R5 BY ADV. SRI.A.A.ZIYAD RAHMAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10/03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R. RAMACHANDRAN NAIR & P.V. ASHA, JJ.

----- M.A.C.A.No.444 of 2014 -----
----- Dated this the 10th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This is an appeal filed by the first respondent before the Tribunal, mainly aggrieved by the reservation given in the award of the Tribunal in favour of the insurer, giving liberty to realise the award amount from the first respondent/appellant herein, after payment to the claimants.

2. The accident and other factors are not under dispute. The appellant was arrayed before the Tribunal as registered owner of the vehicle involved in the accident, viz. an autorickshaw bearing Reg. No.KL-01-C7630 The deceased was riding his motor cycle bearing Reg. NO.KL.01-D511through Thiruvananthapuram - Nagercoil N.H. road from west to east direction. The allegation is that the autorickshaw which was being driven by the second respondent before the Tribunal, hit the motor cycle causing the deceased to fall on the MACA4442014 2 road. He died on the same day in the Medical College Hospital. The quantum of compensation awarded by the Tribunal is Rs.5,12,994/- with interest at 9% per annum from 22.4.1998.

3. The case pleaded by the appellant is that from the award it is seen the appellant remained ex-parte before the Tribunal, even though vakalath was filed. His case is that he had entrusted the case to a lawyer and gave instructions to him, but he failed to defend the case after filing vakalath, and no written statement was filed. The case now pleaded before this Court is that the autorickshaw of which he was the registered owner, was sold to the fourth respondent as per sale note dated 20.12.1997 and he was driving it also. Actually, the fourth respondent in this case filed written statement denying the accident and he contended that he never drove the autorickshaw at the time of accident. According to him, the deceased was knocked down by another vehicle driven by some other person. He denied the ownership of the autorickshaw. The Tribunal found negligence as against the fourth respondent herein who was the second respondent before the Tribunal. MACA4442014 3 4. In support of the pleas raised by the appellant, he has produced various documents along with I.A. No.456/2014. Annexure I is the copy of the sale note dated 20.12.1997 by which he is alleged to have sold the vehicle to the fourth respondent. Annexure II is the copy of the kychit executed by the fourth respondent when he took interim custody of the vehicle from Police Station in Crime NO.463/1997. Annexure III is the copy of the final report in Crime NO.463/1997. Annexure IV is the copy of the judgment in C.C. No.534/1998 by the Judicial First Class Magistrate Court - II Neyyattinkara and Annexure V is the copy of the letter issued by the appellant to the insurer.

5. Actually, according to the case of the appellant, only when revenue recovery proceedings were initiated against him, he came to know about the award and thereafter he filed this appeal. While condoning the delay in filing the appeal this Court directed the appellant to pay an amount of Rs.20,000/- as cost to the insurance company which was paid and thereafter another sum of Rs.25,000/- has been deposited before this Court.

6. Learned counsel for the appellant submitted that the fact that MACA4442014 4 he is not the owner, will clearly absolve him from liability to satisfy the claims of the insurance company. Learned counsel also submitted that the insurance company ought to have proved that the absence of the licence for the driver had really caused the accident and therefore, since there is a total failure on the part of the insurance company to prove the same, the Tribunal went wrong in allowing the insurance company to recover the amount from the owner.

7. Learned counsel for the insurance company submitted that no such contention was raised before the Tribunal by the respective parties. It is also submitted that there is a finding by the Tribunal that the licence was not produced in spite of direction.

8. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has produced a copy of the licence before this Court. We have perused the licence, but it will show that on the date of accident he had no licence because the date of issue of the said licence is 18.3.1998.

9. The question is therefore whether the appellant could be absolved from liability. Learned counsel for the appellant pleaded for MACA4442014 5 a fresh opportunity for the appellant to adduce evidence before the Tribunal. Even though the same is opposed by the learned counsel for the insurance company, for a just decision of the case, we are of the view that the appellant can be given a chance to raise his pleas before the Tribunal.

10. Therefore, we allow the appeal and remand the matter for fresh consideration by the Tribunal only as regards the ownership of the vehicle at the time of the accident. Regarding the quantum of compensation and other benefits granted to

the claimants, we confirm the same. The portion of the award making the appellant liable to satisfy the award, is set aside and the appellant is permitted to file a written statement. The insurance company and the fourth respondent are also given opportunity to raise additional pleadings, if required, and thereafter the Tribunal will proceed with the matter afresh. The amount of Rs.25,000/- deposited by the appellant for filing this appeal, will be returned by the Tribunal. The Registry is directed to return the original documents, if any, produced by the appellant before this Court in IA No.456/2014 as per MACA4442014 6 rules. The parties will bear their costs in the appeal. (T.R. RAMACHANDRAN NAIR, JUDGE.) (P.V. ASHA, JUDGE.) kav/

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