

Saramma Scaria Vs. Mathai

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Court : Kerala

Decided On : Apr-09-2002

Reported in : 2003ACJ213

Judge : K.S. Radhakrishnan and; K.A. Mohamed Shafi, JJ.

Acts : Kerala Motor Accidents Claims Tribunals Rules, 1977 - Rules 5, 8 and 10;
[Motor Vehicles Act, 1988](#) - Sections 20(1), 158(6), 166, 166(4) and 169

Appeal No. : M.F.A. No. 936 of 2001

Appellant : Saramma Scaria

Respondent : Mathai

Advocate for Def. : N. James Koshy, Adv.

Advocate for Pet/Ap. : P.V. Santosh Jose, Adv.

Judgement :

Radhakrishnan, J.

1. This appeal was filed against the award in O.P. (MV) 395/99 of MACT Muvattupuzha. Original Petition was dismissed with cost of the contesting respondents. Appellants herein were the petitioners before the Tribunal. First petitioner is the widow of the deceased and other petitioners are the son and

daughters of the deceased. The deceased was a fisherman and a coolie who was the sole breadwinner of his family consisting of his wife and children.

2. The deceased was riding a bicycle from south to north along the Piravom-Muvattupuzha public road, while so, a bus owned by the K.S.R.T.C. driven by the first respondent in a rash and negligent manner from south to north hit the deceased from behind. Deceased fell down on the road and the back tyre of the bus run over his body and he died on the spot. Deceased was aged 58 years at the time of the accident. He was earning a monthly income of Rs. 2000/-. Claimants were depending on the income from the deceased for their livelihood and on the death of the deceased the family was in complete penury.

3. Petitioners claimed an amount of Rs. 5 lakhs as compensation under various heads. Petitioners also engaged a counsel for conducting the case. Respondents 1 and 2 entered appearance and filed a joint written statement denying negligence on the part of the first respondent. On the basis of the pleadings the Tribunal framed the following issues for trial.

1. Who is responsible for the accident?
2. What, if any, is the quantum of compensation the petitioner is entitled to get?
3. Who is liable to pay compensation.
4. Relief and costs.

The case was posted for evidence on 3.2.2000 but the petitioners were not ready and the case was adjourned to 9.2.2000. On 9.2.2000 the petitioners are not present and there was no representation on behalf of the petitioners. Case was adjourned to 11.2.2000. Petitioners were absent on 11.2.2000, so also the counsel. Respondents counsel was heard and Tribunal passed the following order.

'Issue No. 1: No evidence was adduced on the side of the petitioners. Documents also not produced. Therefore in the absence of the evidence this issue has to be decided against the petitioners.

Issue Nos. 2 and 3: The factum of occurrence of accident was not proved by any evidence. Documents were also not produced. There is nothing in evidence. No data is available to fix up the quantum of compensation. Therefore these issues were also answered against the petitioners.

Issue No. 4: Petitioners are not entitled to succeed.

In the result, the petition is dismissed with the cost of contesting respondents.'

Aggrieved by the manner in which the claim petition was disposed of by the Tribunal they have preferred this appeal stating as follows:

'The absence of the Appellants/Petitioners and their counsel on 9.2.2000 and 11.2.2000 were due to the mistake happened in the taking of the posting dates of the case. The Appellants/ Petitioners were vigilantly conducting the case from 1996 onwards. There was no wilful lapses or negligence from the part of the Appellants/Petitioners for their absence on 9.2.2000 and 11.2.2000 but due to the reasons stated above. The learned Tribunal ought to have given one more opportunity to the Appellants/Petitioners to adduce evidence from their side. Though the respondents did not dispute the accident and resultant death of the deceased, the learned Tribunal dismissed the claim petition as such with cost to the respondents, saying that 'no evidence was adduced on the side of the petitioners, documents also not produced.'

It was also stated in the appeal memorandum that the Tribunal did not even allow the claim under Section 140 of the Motor Vehicles Act. Petitioners/appellants therefore sought for a remand of the case to MACT for de novo consideration giving them an opportunity to adduce evidence. We heard counsel for the appellants Sri. P.V. Santhosh as well as counsel appearing for the K.S.R.T.C. Sri. James Koshy.

4. We may at the outset point out that the Tribunal cannot claim any credit in the manner in which the claim petition was disposed of. We find in very many cases Tribunals are dealing with the compensation claims lightly forgetting the purpose for which they have been constituted. Motor Accidents Claims Tribunals are

constituted under the Act so as to advance speedy remedy to the injured as well as the legal heirs' of the deceased. Claimants are not seeking any charity but their legitimate right to get justice and adequate compensation for the tragedy befallen on them not due to their fault but due to the negligence of the other side. The Tribunal is bound to mitigate the hardship of the person injured and to save the family from penury. In *N.K. V. Brothers (P) Ltd. v. M. Karumai Ammal*, AIR 1980 SC 1354 Supreme Court has reminded the Claim Tribunals stating 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'.

The above mentioned decision was followed by this Court in *Sharlet Augustine v. Raveendran*, 1992 (1) KLT 795 and held 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. Claims Tribunals are constituted under Section 165 of the Motor Vehicles Act. Section 166 deals with application for compensation which says that an application for compensation arising out of an accident may be made by the person who has sustained injury or by any agent duly authorised by the person injured. The relevant portion of Section 166 reads as follows:

'166. Application for compensation. (1) An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made-

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

(b) by the owner of the property; or

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

(d) 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.'

Section 169 deals with procedure and powers of Claims Tribunals. Section 169 reads as follows:

'169. Procedure and powers of Claims Tribunals.

(1) In holding any inquiry under Section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of the Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry'.

Chapter X of the Kerala Motor Vehicles Rules, 1989 also deals with Claims Tribunals. Rule 373 requires mention which is extracted below:

'373. Summary disposal application:-The Claims Tribunal may, after considering the application and the statement, if any, of the applicant recorded under Rule 372 dismiss the application summarily, if for reasons to be recorded it is of the opinion that there are no sufficient grounds for proceeding therewith.'

Rule 377 is also relevant which reads as follows:

'377. Notice to parties involved:- (1) If the application is not dismissed under Rule 373 the Claims Tribunal shall send to the owner of the motor vehicle involved in the accident, its insurer and its driver a copy of the application together with a notice of the date on which it will hear the application and may call upon the parties to produce on that date any evidence that they may wish to tender.'

We may also refer to Sub-rule (5) of Rule 378 which reads as follows:

(5) The Claims Tribunal shall obtain necessary information from the police, medical and other authorities and proceed to settle the claims, whether the parties who were given notice appeared or not on the appointed date.

Rule 379 deals with framing of issues, which reads as follows:

379. Framing of issues-

(1) After perusing the application and the written statements, if any, filed under Rule 378 and also the result of the examination if any, under the same rule, of the parties, the Claims Tribunal shall frame issues before the evidence is recorded.

(2) The Claims Tribunal may at any time before pronouncing judgment amend or delete issues already framed or frame additional issues on such terms as it thinks fit.

Rule 380 deals with summoning of witnesses which reads as follows:

380. Summoning of witnesses - If an application is presented by any party to the proceeding for the summoning of witnesses, the Claims Tribunal shall, on payment of the expenses involved, if any, issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for a just decision of the case:

Provided that if in the opinion of the Claims Tribunal, the party is financially poor, it may not insist on the payment of the expenses involved and the same shall be borne by the Government: Provided further that in cases where the party succeeds in whole or in part, the expenses so incurred by the Government shall be directed to be paid to it by the owner or the insurer, as the case may be, of the motor

vehicle.

Rule 381 deals with appearance of legal practitioner which reads as follows:

381. Appearance of legal practitioner-

(1) Any party may appear in person or through a legal practitioner before the Claims Tribunal.

(2) The scale of fees contemplated in the rules regarding fees payable to the advocates in respect of original suits shall apply in the case of applications for compensations.

Rule 382 enables the Claims Tribunal to make local inspection and to examine any person likely to be able to give information relevant to the proceeding. Rule 387 deals with examination of the injured by a Medical Officer which reads as follows:

387. Examination of the injured by a Medical Officer -The Claims Tribunal may, if it considers necessary, direct any Medical Officer in a Government Hospital or in a Medical College Hospital or any Board consisting of such Medical Officers to examine the injured and issue disability certificate indicating the degree and extend of the disability, if any, sustained as a result of the accident.

Rule 388 deals with method of recording evidence.

5. Government of Kerala in exercise of the powers conferred by Section 111A of the Motor Vehicles Act, 1939 framed Kerala Motor Accidents Claims Tribunals Rules, 1977. Rule 5 deals with summary dismissal of application. Rule 8 relates to framing of issues and Rule 10 deals with appearance of legal practitioner which says that any party may appear in person or through a legal practitioner before the Claims Tribunal.

6. We may examine in this case whether the Tribunal has followed the above mentioned statutory pro-visions before dismissing the claim petition, the details we have referred to earlier. In answer to the claim petition a joint written statement was filed on behalf of the contesting respondents. Issues were framed for trial.

However, no oral or documentary evidence was adduced on either side. Consequently the Tribunal dismissed the claim petition with costs. We are of the view the procedure followed by the Tribunal is unsustainable.

7. Petitioners widow and children have engaged a lawyer to conduct the case on their behalf. Case came up for consideration on 11.2.2000. Petitioners lawyer was not present. Consequently there was no representation on their behalf and the claim petition was dismissed. We are of the view when once issues have been framed Tribunal has to decide the issues on the basis of available records. Rule 378(5) enables the Tribunal to obtain necessary information from the police, medical and other authorities and proceed to settle the claims whether the parties who were given notice appeared or not on the appointed date. In this connection we may refer to the Bench decision of this Court in *Lukose v. Govindan Nair*, 1990 (1) KLT 378. This Court considered the scope of Section 110-B of the Motor Vehicles Act, 1939 read with rules 3, 5 and 20 of the Motor Accidents Claims Tribunals Rules, 1977 and held as follows:

'A reference to the above rules shows that the power of summary dismissal of an application can be exercised only under Rule 5 and once the application survives that stage, the Claims Tribunal cannot but proceed to the final end and make the award after passing through the stage of framing issues, taking evidence, etc. It is useful in this context to refer to Rule 20 which deals with 'judgment and award of compensation'. Sub-rule (1) says that the Claims Tribunal in passing orders 'shall record concisely in a judgment the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the insurer or the owner in the case of vehicles which are not insured and also the person or persons to whom compensation shall be paid'. Its corollary is that even when the Claims Tribunal is not persuaded to grant any compensation to the claimants, the judgment shall contain finding on each of the issues framed and the reasons for such finding'.

The above mentioned decision would indicate that it is the duty of the Claims Tribunal to pronounce judgment supported by reasons and findings as provided in Rule 20(1) on each issue, while disposing of the application which passes the

stage envisaged in Rule 5. In other words, the Motor Vehicles Act and Rules do not empower the Claims Tribunal to dismiss an application merely for default of the applicant without arriving at findings and without adverting to reasons after the stage of framing issues.

8. The State has got a duty, so also the Tribunal, to save the victims from the sufferings caused by the accident as well as the sufferings of the family members who are under considerable financial and psychological pressures. Once it is found that an application cannot be summarily rejected and there are sufficient grounds for proceeding therewith and framed issues the Claims Tribunal is bound to decide the issues whether there was appearance or not on behalf of the claimants or injured as the case may be and the opposite parties. It is the duty of the Claims Tribunal to obtain necessary information from the police, medical and other authorities and proceed to settle the claims, whether the parties who were given notice appeared or not.

9. Tribunal has got a paramount duty to render justice to hapless victims of road accident as well as the claimants of the deceased. Procedures have been laid down under the Act and Rules to award immediate compensation. Claim under Section 140 would be met immediately whether claimants appeared or not. The injured or the claimants of the deceased due to various reasons might be suffering either from the injury or might not have overcome the tragedy befallen on them. Tribunal should show human compassion and sympathy in such situations and not to set them ex parte leave them in the lurch. Further in cases where parties have engaged an advocate that application should not be dismissed due to non-appearance of the counsel. The Tribunal should still decide the issues on the basis of the records available with them. Tribunal should remember that the statute has permitted the applicant to make an application in person or by an agent duly empowered by the person injured or through legal practitioner. Section 166(4) has directed the Tribunal also to treat the report forwarded to it under Sub-section (6) of Section 158 as an application for compensation.

10. This is a case where the claimants filed the petition through a legal practitioner. The legal practitioner failed to appear before the Tribunal and conduct

the case of the widow and children. Cases are on the rise complaining non-appearance of counsel followed by further appeals to this Court for setting aside the order. This is at the expenses of the victims and on certain cases legal practitioner demanding professional fees on percentage basis. This practice should be deprecated.

11. In the wake of the above circumstances we are inclined to set aside the order of the Tribunal and remit the matter back to the Tribunal for de novo consideration. However, we are inclined to give certain directions to the Claims Tribunals for future guidance and compliance.

1. The Claims Tribunal may, after considering the application and the statement, if any could dismiss the application summarily, if for reasons to be recorded it is of the opinion that there are no sufficient grounds for proceeding therewith.

2. Tribunal on evidence finds that a claim petition is frivolous or made on experimental basis would dismiss the same with compensatory costs and in appropriate cases would take action against vexatious and frivolous litigations.

3. Tribunal if finds there is no reason to dismiss the application summarily will have to frame issues. When issues are framed the Tribunal is duty bound to answer the issues framed and decide the claim petition on merits on the basis of the report made available under Section 158(6) read with Rule 378(5) of the Rules.

4. Tribunal even in the absence of any evidence adduced by the claimants could decide the issues on the basis of the FIR, scene mahazar, wound certificate and other materials applying the principle of *res ipsa loquitur*. This principle as such may not dispense with the need to prove a fact alleged by a person but the Tribunal after considering the police report, objection filed by the opposite party if any, can reach a conclusion though no oral and documentary evidence was adduced by the claimant. Of course in appropriate cases Tribunal could insist the appearance of injured person so as to get itself satisfied of the claim. Culpability could be presumed if Tribunal satisfied on the basis of the available materials that the claim is genuine and award adequate compensation.

5. Tribunal may if it considers necessary, direct any Medical Officer in a Government Hospital or in a Medical College Hospital or any Board consisting of such Medical Officers to examine the injured and issue disability certificate indicating the degree and extend of the disability, if any, sustained as a result of the accident. Tribunal also in appropriate cases depending upon the facts of the case should see that the disability certificate be produced before the Tribunal to be issued by specialist doctor (Government or Private) with not less than 10 years standing in the specialty, who had not treated the patient in the acute stage after the accident. In this connection we may refer to Government order dated 15.5.1997 which says that such a condition is to ensure unbiased and accurate assessment of the permanent disability.

6. Claims Tribunal shall see that it shall obtain all information from the police, medical and other authorities and shall not drive the injured or the claimants to the police stations or hospitals so as to get copies of those reports. On request and paying necessary fees relevant reports pertaining to the case obtained from the police station or hospital should be furnished to the claimants. If it is found that the party is financially poor, care should be taken that the expenses be met by the Government.

7. Office of the Claims Tribunal should help the injured person or the claimants in appropriate cases to file proper application in Form No. A claiming compensation before the Tribunal. Special interest should be taken in cases where the party is not represented by legal practitioner.

8. Office of the Tribunal should impress upon the applicants about the statutory provision it would not be necessary that the claimant himself should conduct the proceeding. He could entrust the case to an agent duly authorised by him or a legal practitioner. Tribunal should also ascertain from the injured or the claimants as to whether any injustice has been meted out to them from any quarters at any stage of the proceedings.

9. Tribunal should also take care to inform the Bar Council of Kerala if the legal practitioner appointed by claimants fails to appear before it. The Bar Council of Kerala should take appropriate steps depending upon the merits of each case

where there is non-appearance of the counsel.

10. Tribunal should show compassion when the claimant or the injured are examined before it. Unnecessary and inconvenient questions should not be put either by the Tribunal or legal Practitioners considering the fact that the injured as well as claimants are in considerable financial and psychological pressure. The approach of the Tribunal should be to help the persons in distress and not to scare them away from the corridors of Tribunal. Tribunal should bear in mind the fact that the claimants or the injured are not seeking any charity. Claimants would feel that Tribunal is a place of comfort and solace and not a place of harassment.

11. Certificate issued by Medical Officer if not objected to may be marked in evidence. If marked on admission without reservation, the contents are not only evidence but are taken as admitted, the result being the contents cannot be challenged either by way of cross-examination or otherwise. Therefore the certificates issued by doctors which are not objected to by the other side could be relied upon by the Tribunal in awarding compensation. In doubtful cases the Tribunal can summon the doctor.

The above mentioned directions should be scrupulously observed by the Motor Accidents Claims Tribunals in the State. Communicate a copy of the judgment to all the Motor Accidents Claims Tribunals in the State for information.

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