

Killath Parambil Hemza and anr. Vs. Pakiriperambil Abdulla and anr.

Killath Parambil Hemza and anr. Vs. Pakiriperambil Abdulla and anr.

SooperKanoon Citation : sooperkanoon.com/726568

Court : Kerala

Decided On : Feb-13-1990

Reported in : 1990ACJ1103

Judge : U.L. Bhat and; K. Balanarayna Marar, JJ.

Appeal No. : M.F.A. No. 70 of 1986

Appellant : Killath Parambil Hemza and anr.

Respondent : Pakiriperambil Abdulla and anr.

Advocate for Def. : M.A. Manhu and; M.P. Mohammed Aslam, Adv.

Advocate for Pet/Ap. : S. Parameswaran, Adv.

Disposition : Appeal dismissed

Judgement :

U.L. Bhat, J.

1. First respondent herein was travelling in an autorickshaw belonging to the first appellant on 9.6.1984. The autorickshaw capsized and the passenger sustained grievous injuries. Alleging that the accident took place on account of rash and negligent driving on the part of the driver of the autorickshaw, the passenger filed a claim petition seeking compensation of Rs. 75,000/-. The claim was opposed on the ground that it was a case of an inevitable accident. The amount claimed also was challenged as excessive. The Tribunal upheld the claim of the claimant to the extent of Rs. 41,000/- directing the driver, owner and insurer to pay the amount with interest and costs. The owner and insurer of the vehicle have filed the appeal. The claimant has filed cross-objection.

2. The claimant, examined as PW 1, and an independent witness examined as PW 2 uniformly deposed that the autorickshaw was being driven at an excessive speed and on that account it suddenly capsized injuring the passenger. The driver, examined as RW 1, deposed that he was driving the vehicle at a moderate speed and he saw two oxen rushing up from the opposite direction and to avoid collision swerved the autorickshaw and the autorickshaw capsized. As pointed out by the Tribunal, his interested testimony cannot outweigh the disinterested testimony of PW 2. The Tribunal was justified in holding that the accident arose on account of rash and negligent driving of the autorickshaw.

3. In the appeal memorandum, it is stated that the insurer's liability is limited to Rs. 15,000/-. Neither the owner nor the insurer produced the copy of the policy before the Tribunal or in this court. Learned counsel for the claimant who has a copy of the policy in his file frankly stated that the policy covers unlimited liability. Therefore, this contention must fail.

4. Both sides are dissatisfied with the quantum of compensation awarded. Evidence shows that the claimant

sustained fracture of the shaft of left femur. Evidence of the doctor who treated the injured, namely, PW 3 shows that the fracture was initially treated by skeletal traction followed by cast bracing on 6.7.1984. X-ray showed fracture to be in good position and he was discharged on 18.7.1984 in plaster. He was advised to walk with crutches and to meet the doctor after six weeks. On 6.9.1984 he was readmitted because the fracture did not show any evidence of union. On 25.9.1984 an open reduction, internal fixation and bone-grafting were performed. He was ultimately discharged on 4.10.1984 with the wound healed and fragments in good position. Considering the nature of the injury and the period of treatment, we are of opinion that the sum of Rs. 3,000/- allowed toward loss of earnings, Rs. 3,000/- allowed for medical expenses and Rs. 10,000/- allowed for pain and suffering (as against the claim of Rs. 15,000/-) is reasonable. As against the claim of Rs. 50,000/- as compensation for permanent disability and loss of earning power, the Tribunal awarded Rs. 25,000/-. The doctor did not contra-indicate the possibility of any permanent disability though he stated that ordinarily there is not likely to be permanent disability. There is no dispute that the claimant was working as an electrician. The Tribunal has found that a person employed in such a job requires full use of both the legs and he will not be in a position to climb steps or attend to similar activities. Even assuming that there was no permanent disability as such, it is undoubtedly a case where there would be loss of earning power. In these circumstances, we agree that the award of Rs. 25,000/- is reasonable. There is no justification to either increase or reduce the amount awarded.

5. The appeal and cross-objection are dismissed, but without costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com