

Vavachan Vs. Kerala State Road Trans. Corpn. and anr.

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Court : Kerala

Decided On : Mar-15-1991

Reported in : 1992ACJ191

Judge : Sankaran Nair, J.

Appeal No. : O.P. No. 2279 of 1991

Appellant : Vavachan

Respondent : Kerala State Road Trans. Corpn. and anr.

Advocate for Def. : P. Gopalakrishnan Nair, Adv. and K. Thankappan, G.P.

Advocate for Pet/Ap. : K. Reghu, Adv.

Disposition : Petition allowed

Judgement :

Sankaran Nair, J.

1. Petitioner seeks appropriate directions to command the second respondent, District Collector, Kottayam, to recover a sum of Rs. 34,358.20 from the first respondent Kerala State Road Transport Corporation, called 'K.S.R.T.C.' hereinafter, pursuant to the award of the Motor Accidents Claims Tribunal, Kottayam in O.P. (MV) No. 127 of 1987 and pay the same to him. Petitioner

suffered injuries on being knocked down by a bus belonging to the first respondent and driven by one of its employees on 31.10.1986. He moved the Motor Accidents Claims Tribunal and an award was passed. It is submitted by both sides that the first respondent K.S.R.T.C., has not filed an appeal the award.

2. I have heard the standing counsel for the first respondent. First respondent has no valid excuse for not remitting the amount. Nor, has the second respondent any justification for not recovering the amount. In the circumstances, the second respondent is directed to take necessary action, realise the amount and pay it over to the petitioner within thirty days from today.

3. Before parting with the case, I must notice a disturbing aspect revealed in this case, as also in several other cases. Some of the Motor Accidents Claims Tribunals seem to think that only the K.S.R.T.C. is liable to make the payments and not the particular employee who is responsible for the accident. It is well to remember that the liability of the employer is vicarious, while that of the driver is direct. If awards are passed against the Corporation alone, exonerating the drivers when they are liable, it will lead to unsatisfactory results. The funds of the Corporation will be dissipated, while the erring drivers are left free without constraints or consequences. That might encourage rash drivers and lead to the depletion of funds of a public undertaking. A Division Bench of this Court had occasion to comment on this aspect in *Dr. Jacob Eapen v. Kerala State Road Trans. Corpn.* 1988 ACJ 1 (Kerala). The court observed: .any commercial or utilitarian venture cannot promote or countenance a state of affairs where the negligence of its servants puts the undertaking to huge losses...It behoves not, a public sector undertaking to be a public hazard...

If the liability of the drivers is fixed, where it ought to be, the Corporation can realise the amount of compensation from them and thus reduce its own losses. The attitude of the Corporation and the attitude of the Motor Accidents Claims Tribunals requires updating on realistic concerns. It is expected that all the Motor Accidents Claims Tribunals in the State and the K.S.R.T.C. will act in consonance with the observations made hereinbefore.

Writ petition is allowed as above.

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