

Mathew Mathai Vs. General Manager K.S.R.T.C. and ors.

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Court : Kerala

Decided On : Aug-10-1989

Reported in : II(1989)ACC550

Judge : Bhat, J.

Appellant : Mathew Mathai

Respondent : General Manager K.S.R.T.C. and ors.

Judgement :

Bhat, J.

1. Appellant herein represented by his son and next friend Sled claim petition before the M.A.C. Tribunal, Alleppey seeking compensation on account of the injuries sustained by him in a motor vehicle accident on the allegation that the accident occurred on account of the rash and negligent driving of the motor vehicle, namely K.S.R.T.C. bus KLX 1705. The driver remained ex-parte. K.S.R.T. Corporation and the State Insurance Officer denied rashness of negligence on the part of the driver of the bus and alleged that the accident occurred because appellant was walking without caring for his own safety and crossed the road negligently. They also contended that the petition was not Maintainable inasmuch as provisional of Order XXXII of the Code of Civil Procedure do not apply to proceedings before the Tribunal. They challenged the quantum of compensation claimed. The Tribunal upheld the contentions of the respondents and dismissed

the petition. Hence this appeal.

2. One of the Main controversies in the case relates to the competency of the injured to file a petition through his son and next friend under Section 110A of the Motor Vehicles Act (for short the Act). There is no dispute that the appellant sustained severe injuries. In the petition it was alleged that the injured lost his memory completely and was unable to move about and to take care of himself. These averments in the petition were not denied in the written statement filed by the owner and the insurer. In these circumstances, the Tribunal should have proceeded on the basis that the condition of the injured was such that he had lost his memory and was unable to take care of himself, Rule 15 of Order XXXII of the Code of Civil Procedure lays down that Rules I to 14 except Rule 2A shall, so far as may be apply to persons adjudged to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued. On the pleadings, undoubtedly appellant is a person who is incapable of protecting his interest when suing, by reason of mental infirmity Such a person, by virtue of Rule 1 read with Rule 15 can sue through a next friend. It is the contention of the respondents that provisions of Order XXXII C.P.C. do not apply to proceedings before M.A.C. Tribunals and therefore, the appellant could not have sued through his next friend.

3. The provisions in Chapter VIII of the Act are applicable to proceedings before M.A.C. Tribunals. Constitution of claims Tribunals by the Government is dealt with in Section 110. State Government may constitute such tribunals for the purpose of adjudicating upon claims for compensation. However, where such claims include claim for compensation in respect of damage to property exceeding rupees two thousand, the claimant may at his option refer the claim to a Civil Court for adjudication and where a reference is so made, the Tribunal shall have no jurisdiction to entertain any question relating to such claim. Section UOA deals with applications for compensation. Section 110B deals with awards of the Tribunals. The Tribunal is required to make an award determining the amount of compensation which appears to it to is just, Section 110C deals with the procedure and powers of claims Tribunals while holding injury under Section 110-B. The

Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. The Tribunal shall have the powers of a 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 other purposes as may be prescribed. It shall have powers of a Civil Court for all-purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure. Section 110-F deals with bar of jurisdiction of Civil Courts. Power of the State Government to make rules is provided in Section 111 A. Rules may provide for all or any of the matters enumerated in the Chapter and the powers vested in a Civil Court which may be exercised by the claims Tribunal and other matters Accordingly, State Government have framed the Kerala Motor Accidents claims Tribunal Rules 1977. Rule 21 states that the provisions of the Code of Civil Procedure specified therein shall, so far as may be, apply to the proceedings before the claims Tribunal. Rule does not specify Order XXXII of the Code of Civil Procedure. The argument is that since neither the provisions of the Act nor the Rules specifically state that the provisions of Order XXXII of the Code are applicable to Tribunals, such provisions are inapplicable.

4. In *Darshan Devi v. Sher Singh* AIR 1978 Punjab and Haryana 265 Punjab and Haryana High Court held that provisions of Order XXXII of the Code are applicable to proceedings before M.A.C. Tribunals. This judgment was challenged before the Supreme Court in *State of Haryana v. Darshana Devi* (1979) 2 SCC 236 and the Supreme Court dismissed the special leave petition. See also *Jai Singh v. N.A. Subramaniam* (FB).

5. In *M.J. Stone v. Union of India* 1975 ACJ 256 learned Single Judge of the Himachal Pradesh High Court held that when a compromise is sought to be entered on behalf of a minor before the Tribunal, provisions of Order XXXII Rule 7 would be applicable even though they are not specifically made applicable to proceedings before Tribunals under the Act or the Rules. A Division Bench of the Himachal Pradesh High Court dismissed the appeal against this decision in *National Carriers v. MJ. Stone* 1980 ACJ 93.

6. We notice that Viswanatba Iyer, Judge in Sigma Agencies (P) Ltd. v. P.V. Thomas 1981 KLT 9 held that even though Kerala Buildings (Lease and Rent Control) Act, 1965 does not specifically render the provisions of Order XXXII applicable to rent control authorities, a minor can be represented by next friend and file an application under that Act.

7. It is clear from Section 110C of the Act, claims Tribunal may follow such summary procedure as it thinks fit subject to rules that may be made in this behalf. Tribunal shall also be deemed to have powers of a civil court for the purposes mentioned in Section 110C(2). In the conduct of an inquiry certain specific powers contemplated in the Civil Procedure Code have been conferred on Tribunals by the provisions of the Act as well as the Rules. The Tribunal has all the trappings of the court. It may be that in the same State Tribunals may or may not be constituted in regard to certain areas. In such contingencies within the same State in some areas tribunals may have exclusive jurisdiction in regard to compensation claims and in certain other areas the jurisdiction may still continue in civil courts. Even where tribunal has been constituted, the proviso to Section 110(1) would give an option to the claimant to refer the claim of the nature mentioned therein to a civil court for adjudication and in such a case tribunal has no jurisdiction. An interpretation which leads to a situation wherein claims before Tribunal Order XXXII cannot be invoked and in suits before civil court for similar claims Order XXXII could be invoked would lead to absurdity.

8. The Supreme Court dealing with power of Regional Transport Officer to substitute persons on the death of an applicant in a proceeding under Section 57, of the Act, observed in Dhani Devi v. S.B. Sharma : [1969]2SCR507 :

In the absence of any statute or statutory rule, the Regional Transport Authority may devise any reasonable procedure for dealing with the situation. As stated in American Jurisprudence 2nd Vol. 2 (Administrative Law), Articles 340 p. 155 where the statute does not require any particular method of procedure to be followed by an administrative agency, the agency may adopt any reasonable method to carry out its functions.

9. In *Velunni v. Vellakutty* 1989 (2) K.L.T. 227 after referring to some of the provisions of the Act and Rule 21 of the Rules we observed :

The tribunal is not a court though it performs functions similar to a court. The tribunal is free to follow any procedure, which it considers expedient in the interest of justice so long as the procedure is not inconsistent with the rules of natural justice and does not contravene the provisions of the Act or the Rules. In order to do justice for which it can was been constituted, the tribunal would have power to apply the principles underlining the provisions of the Code of Civil Procedure, even though not rendered specifically applicable.

10. The provisions of the Order XXXII reflect principles of natural justice, equity and good conscience, inasmuch as they allow litigation to be prosecuted or defended on behalf of minors, persons of unsound mind and persons with mental infirmity. In the absence of these provisions, interests of persons with such disability are bound to suffer. In the case of a person who is disabled on account of the accident or is even otherwise disabled it is imperative that his claim must be prosecuted before the tribunal; for that the tribunal is at liberty to dev appropriate procedure. In this view the tribunal must be recognised to have power to invoke the provisions of Order XXXII of the Code of Civil Procedure. This is necessary to do justice, and to achieve the purpose for which the tribunal is constituted. It can also be said that the tribunal has incidental and ancillary power to invoke the provisions of Order XXXII of the Code of Civil Procedure. We therefore hold that the claim petition filed by the injured through his son, next friend, is Maintainable.

11. The next argument relates to the finding of the tribunal that the claimant failed to prove that the accident occurred on account of the rash and negligent driving of the bus. Claimant's son was examined as PW 1 and an independent eyewitness was examined as PW 2. Their evidence shows that the road lies north to south that the claimant was walking along the western edge of the road and while so bus came from the opposite direction at an excessive speed and hit him. PW 1 was standing in a shop to the eastern side of the road because of rain. PW 2 was working as a mason in a nearby house and had come out to take tea and was on the western side of the road. Their evidence shows that right side of the bus hit the

injured beyond the tarred road and the injured was thrown about the tarred road. This evidence was rejected by the tribunal on the basis of the evidence of the driver and on account of the non-production of the scene mahazar prepared for the investigation of the crime case against the driver. Driver examined as PW 1 deposed that he had stopped the bus in a bus stop and then another bus came from the opposite direction and stopped on its western side. Later on he heard a sound. He could not see anything as there was rain and passengers said that a person had been hit. He looked out and saw a person lying at the scene. It is significant that the driver did not appear before the tribunal to file accouter. Counter was filed only by the owner and the insurer. They did not put forward a case that at the time of the accident bus was stationary or that another bus has come from the opposite side. The specific case put forward in the counter was that the accident took place because the injured was walking without taking care for his own safety and crossed the road negligently. A pedestrian crossing the road negligently cannot be struck down by a stationary bus. The tribunal also thought that if the moving bus had struck down the pedestrian, he would have sustained serious injuries. As a matter of fact Ext. A1 would certificate and Ext. A2 medical certificate would show that the injured had sustained a large number of injuries. Even RW 1 did not depose that the injured suddenly crossed the road when the bus was moving. In these circumstances we are of opinion that the tribunal took a perverse view of the evidence. We hold that even in the absence of scene mahazar there is sufficient evidence to arrive at the conclusion that the accident occurred on account of the rash and negligent driving of the bus.

12. The tribunal fixed the compensation due at Rs. 4,720/-. On going through the judgment we find that Rs. 2,720/- was allowed under various heads under special damages and Rs. 2,000/- was allowed for pain and suffering. The tribunal disallowed compensation on account of permanent disability and loss of earning power. This seems to be justified taking into consideration the injuries. We find no ground to interfere with the quantum awarded.

13. In the result, we set aside the judgment of the tribunal and award compensation of Rs. 4,720/- against respondents. Since there is no evidence to show that the vehicle was insured this amount shall be paid jointly and severally

by respondents 1 and 2, owner and driver of the bus. The amount awarded shall carry interest at 9% per annum from 10-10-1980 till payment. Claimant shall be entitled to his costs before the tribunal. The appeal is thus allowed with costs.

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