

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

MACA.No. 2388 of 2009 ()

AGAINST THE AWARD IN OPMV 136/2005 of M.A.C.T., PERUMBAVOOR DATED
12-05-2009

APPELLANTS/PETITIONERS:

1. REJITHA, W/O. DECEASED RAMAKRISHNAN
34 YEARS, VARIYALIKKUDY HOUSE, ARACKAPPADY VILLAGE
VENGOLA KARA, VALAYANCHIRANGARA P.O.
 2. ARUN (MINOR 14 YEARS, S/O. DECEASED
RAMAKRISHNAN DO.REP. BY HIS MOTHER REJITHA
W/O DECEASED RAMAKRISHNAN
34 YEARS, VARIYALIKKUDY HOUSE, ARACKAPPADY VILLAGE
VENGOLA KARA, VALAYANCHIRANGARA P.O.
 3. AMAL (MINOR), AGED 10 YEARS,
S/O. DECEASED RAMAKRISHNAN DO.REP. BY HIS MOTHER
REJITHA, W/O. DECEASED RAMAKRISHNAN, 34 YEARS
VARIYALIKKUDY HOUSE, ARACKAPPADY VILLAGE, VENGOLA KARA
VALAYANCHIRA P.O.
 4. JANAKI, W/O. VELAYUDHAN, KARIYELIKUDY
HOUSE, VENGOLA VILLAGE, VENGOLA KARA.
- BY ADVS.SRI.SHEJI P.ABRAHAM
SMT.GISA SUSAN THOMAS

RESPONDENTS/RESPONDENTS

1. RENJITH N.R., S/O. RAMACHANDRAN,
NETTIKADAN HOUSE, KRARIYALI, KOMBANAD P.O.
 2. KABEER C.A., CHALAKKARA HOUSE,
11/353, THRIKKAKKARA, KAKKANADU P.O.
PIN 682 030. (DELETED)
 3. THE MANAGER, UNITED INDIA
INSURANCE CO. LTD., B.O. NO.4, ERNAKULAM.
- * R2 IS DELETED FROM THE PARTY ARRAY AS PER ORDER DATED
12.06.2015 IN M.A.C.A.
- R3 BY ADV. SRI.A.R.GEORGE
R1 BY ADV. SRI.SIRAJ KAROLY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.No.2388 OF 2009

Dated this the 29th day of July, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimants before the Tribunal. They are the widow and two minor children and mother of deceased Ramakrishnan.

2. The Tribunal by the impugned award dismissed the same on finding that the claimants have failed to establish negligence on the part of the first respondent driver.

3. The accident occurred on 18.02.2003. The deceased was engaged in loading of granite from a granite quarry at Mannur into the tempo bearing Reg.No.KL 7/G-5758. The lorry was parked by the first respondent driver at the place of occurrence. Simultaneously, somebody was engaged in cutting a big njaval tree and the said tree fell down into the platform of the tempo where the deceased was standing

and he sustained fatal injuries and he was immediately taken to the Medical College Hospital, Kolencherry and succumbed to the injuries at 12.30 p.m.

4. Both the first and second respondents remained ex parte and the third respondent Insurance Company filed a written statement.

5. On point No.1, the Tribunal considered various aspects. Evidence was adduced by the claimants by examining PWs 1 to 3 and by producing Exts.A1 to A5. Ext.X1 is the CD file, Ext.X1(a) is the case diary and Ext.X1(b) is the copy of the charge sheet in the C.D.file.

6. The learned counsel for the appellants submitted that the view taken by the Tribunal that the accident occurred due to the fall of a tree and no amount of negligence can be attributed to the driver of the tempo is wrong. According to the learned counsel, a casual connection alone need to be proved which principle is settled by various decisions of this Court.

7. We heard the learned counsel for the Insurance Company also on this question. It is submitted that the accident is not due to any use of the vehicle and due to any negligence of the driver.

8. The legal point is whether the same is a motor vehicle accident or not. On this point, for advantage we will refer to the judgment of the Apex Court in **Kaushnuma Begum v. New India Assurance Co.Ltd. [2001 (1) KLT 408 (SC)]**. It was held therein that even if there is no negligence on the part of the driver or owner of motor vehicles, but accident happens while the vehicle was in use, the owner can be made liable for damages to the person who suffered on account of such accident. Various principles have been examined in detail there. We will also refer to the judgment of this Court in **National Insurance Co. Ltd. v. Sreelekha (2014 (1) KLT 253)**, wherein it was held that the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct or proximate and it can be less immediate as well.

9. Even though the vehicle remained stationary, the accident arose out of the use of the vehicle. This aspect was considered by a Division Bench of this Court in **New India Assurance Co. Ltd. v.**

Lakshmi (2000 (3) KLT 80). We extract herein below paragraph 2 of the said judgment :

“ In this connection, it has to be noted that jurisdiction under Sec.165 of the Act is attracted if there is an accident involving death of or bodily injury to a person arising out of the use of a motor vehicle. The primary fact which, therefore, attracts the jurisdiction of the Tribunal is the use of a motor vehicle. The word 'use' is used in the Section in a wide sense. It covers all employment of the motor vehicles, so that whenever the vehicle is put into action or service, there is 'user' of the vehicle within the provisions of Se.165 of the Act, whether the vehicle was being driven, or repaired or simply parked or kept stationary or left unattended. In that sense, the vehicle is used, whenever the vehicle is driven out for some purpose or it is kept stationary. This, without anything more, is sufficient to attract S.165 of the Act. Therefore, whenever any accident occurs causing death of or injury to persons because of the vehicle or its user the jurisdiction of the Claims Tribunal is attracted. Any accident occurring in the course of the user for carriage of passengers of otherwise is liable to be compensated through the forum provided under S.165 of

the Act. The basic requirement of such claim is only that it should arise out of the use of motor vehicle. There is no warrant for the contention that the accident should take place at a time when the vehicle was in motion or the accident has resulted in damage to the vehicle. All that is required is that there should be an accident, viz. something unexpected and unintended and that should arise out of the user of the vehicle.”

10. In that case, the claimant sustained injury on account of a fertilizer bag falling upon him in the process of unloading it from a stationary lorry and this Court upheld grant of compensation.

11. In this case, the accident occurred while the deceased was engaged in loading granite. The course of employment and the casual relationship between the use of the motor vehicle and the accident has therefore been established. What is required is only to show there is casual connection and even if it is not direct proximate, it can be safely concluded that the accident arose out of the use of the lorry which was parked for loading. The final report submitted by the Police shows that the deceased was loading granite and one Eldo was cutting a njaval tree

standing on the top of the quarry, which fell down on the deceased.

12. In the light of the above legal position, the view taken by the Tribunal is wrong and therefore we reverse the same. We hold that the liability is on the part of the driver and owner of the vehicle. Then the next question is regarding the quantum of compensation. Obviously, it was not assessed by the Tribunal. The learned counsel for the appellants pleaded that since it is an old case, this Court may decide the quantum, whereas the learned counsel for the Insurance Company submitted that various aspects will have to be considered by the Tribunal. It is submitted that the question will be whether the Company is liable to indemnify the owner in respect of entire compensation fixed i.e. more than what is payable under the Workmen's Compensation Act.

13. Our attention was invited by the learned counsel for the appellant to the copy of Policy available in the C.D.file. The face page shows that endorsement 39 is also there. IMT 39 under Indian Motor Tariff is extracted herein below :

“ Legal liability to persons employed in connection

with the operation and/or maintaining and/or Loading and/or Unloading of Motor Vehicles.

(For GOODS VEHICLE)

*In consideration of the payment of an additional premium of --- it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the **Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law** in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/or unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured in such occupation in connection with the --- and not exceeding seven in number and will in addition be responsible for all costs and expenses incurred with its written consent.”*

14. Our attention was invited to the above specific provision in IMT. The issue therefore will be whether the Insurance Company will be liable to meet the entire liability. On this question since the Tribunal has not entered any finding, we deem it fit to remand the

matter for consideration by the Tribunal. Since it is an old case, it will be disposed of expeditiously as the claimants are widow, minor children and mother of the deceased who are yet to receive the quantum.

15. Accordingly, the award is set aside and the matter is remanded for consideration by the Tribunal for fixing the quantum of compensation and allied matters like liability of owner and insurer. The parties will appear before the Tribunal on 24.08.2015 and the Tribunal will take every endeavour to dispose of the matter within a period of three months.

The Registry will send back the records to the Tribunal forthwith.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.