IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 5TH DAY OF JULY 2023 / 14TH ASHADHA, 1945
MACA NO. 1863 OF 2014

AGAINST THE ORDER/JUDGMENT IN OPMV 240/2011 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOTTAYAM

APPELLANTS/PETITIONERS:

1 MARYKUTTY KURIAN
KARIAMPUZHA HOUSE, SREEKANDAMANGALAM POST,
ATHIRAMPUZHA.

2 BINCY JOHN
KARIAMPUZHA HOUSE, SREEKANDAMANGALAM POST,
ATHIRAMPUZHA, REPRESENTED BY POWER OF ATTORNEY
HOLDER MARYKUTTY KURIAN, KARIAMPUZHA HOUSE,
SREEKANDAMANGALAM POST, ATHIRAMPUZHA.

BY ADVS.
SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZHY

RESPONDENTS/RESPONDENTS:

1 BABU JOSEPH
KAVUNKAL HOUSE, ARUNOOTTIMANGALAM POST,
KADUTHURUTHY, KOTTAYAM - 686 604.

2 THE NEW INDIA ASSURANCE CO. LTD.
KOTTAYAM - 686 001.

BY ADVS.
SRI.GEORGE CHERIAN (SR.)
SMT.LATHA SUSAN CHERIAN
SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 21.06.2023, THE COURT ON 05.07.2023 DELIVERED THE FOLLOWING:

C.R

SOPHY THOMAS, J.

MACA No.1863 of 2014

Dated this the 5th day of July, 2023

J U D G M E N T

The claimants in OP(MV) No.240 of 2011 on the file of Motor Accidents Claims Tribunal, Kottayam, are the appellants herein, aggrieved by the dismissal of their claim for compensation on the death of Mr.Alexander Kurian.

2. The case of the appellants could be summarised as follows:

The 1st appellant is the mother and 2nd appellant is the wife of Mr.Alexander Kurian, who died in a road traffic accident occurred on 05.03.2010 at 12.30p.m. The deceased was riding his motorcycle through Kaduthuruthy-Arunoottimangalam road from west towards east and when he reached a place called Alary, KL05/N-2550 autorickshaw driven by the 1st respondent from east to west, in a rash and negligent manner, dashed against his motorcycle and he was thrown down and sustained fatal injuries. He was taken to

Holy Ghost Mission Hospital, Muttuchira and from there to Matha Hospital, Thellakom. Since his condition was bad, he was referred to Medical College Hospital, Kottayam, but, on the way, he succumbed to the injuries. Mr.Alexander Kurian was aged only 36 and he was working as Sales Manager of M/s.Devon Curry Powder, drawing monthly salary of Rs.20,000/-. Due to his death, the appellants lost their breadwinner and hence they approached the Tribunal claiming compensation of Rs.15 lakh.

3. The 1st respondent was the owner cum driver of the autorickshaw and the 2nd respondent was the insurer. Both of them opposed the claim of the appellants and they filed separate written statements.

4. The 1st respondent-owner cum driver vehemently contended that, his autorickshaw never dashed against the motorcycle ridden by the deceased and in fact, the injured was taken to the hospital in his autorickshaw, while he was lying on the road, falling from his bike. Though Kaduthuruthy Police falsely implicated him as an accused in Crime No.176 of 2010, he filed several complaints to higher Police authorities against the illegal acts of the Investigating Officers. Thus he was disputing the

accident, and his contention was that, if at all he was found liable, his vehicle was validly insured with the 2nd respondent so as to indemnify him.

5. The 2nd respondent/insurer also opposed the claim disputing the accident. According to them, the motorcycle ridden by the deceased lost its control and skidded in the road whereby the deceased fell down and sustained head injury. It was admitted that, the autorickshaw was insured with the 2nd respondent during the period of accident. The deceased had no valid driving licence to ride his motorcycle. Since no accident occurred involving the autorickshaw owned by the 1st respondent, the Insurance Company disowned their liability to indemnify the insured.

6. Learned Tribunal examined PWs 1 to 4 and marked Exts.A1 to A18 from the side of the appellants and RWs 1 and 2 and Exts.B1 to B7 from the side of the respondents.

7. On analysing the facts and evidence, learned Tribunal found that, the autorickshaw driven by the 1st respondent never hit the motorcycle, and the accident occurred when the motorcycle ridden by the deceased skidded on the road. So, the claim of the appellants was turned down, against which they have come up with

this appeal.

8. Now let us see whether there is any illegality, irregularity or impropriety in the impugned award warranting interference by this Court.

9. Heard learned counsel for the appellants and learned counsel for the 2nd respondent.

10. Learned counsel for the appellants submitted at the outset that, it is a strange case where the driver of the offending autorickshaw denied the accident though that vehicle was having valid insurance coverage. According to him, the accident occurred when the autorickshaw driven by the 1st respondent in a rash and negligent manner dashed against the motorcycle ridden by the deceased and so, he was the person responsible for the accident. He being the owner too, the 2nd respondent/insurer was liable to indemnify him, on the strength of valid policy covering the accident period.

11. Learned counsel for the appellants is assailing the impugned award mainly on two grounds:

The first ground is that, when Ext.A3 charge sheet was there against the 1st respondent registered under Sections 279 and 304A

of IPC, a subsequent investigation with respect to the very same incident was illegal and improper, and Ext.B2 refer charge was liable to be rejected by the Tribunal on that reason alone. According to him, learned Tribunal applied double standards while analysing Exts.A3 and B2 final reports. He pointed out that, in paragraph No.8 of the award, towards last, it was stated that, the Tribunal was not expected to sit in judgment over the legality or otherwise of the further investigation of RW2 on the direction of the Inspector General of Police. While accepting Ext.B2, learned Tribunal refused to accept Ext.A3 final report.

12. Another contention taken up by learned counsel for the appellants is that, learned Tribunal ought not have relied on Ext.B1 forensic lab report as the person who issued the same was not examined to prove its contents.

13. Now let this Court re-analyse the available facts and evidence, to see to what extent, the allegation made by the learned counsel for the appellants, is sustainable.

14. The accident occurred on 05.03.2010 at 12.30 p.m. The First Information Statement was given by the brother-in-law of the deceased at 10.30 p.m on the same day i.e. after 10 hours of the

accident. In the First Information Statement, the brother-in-law of the deceased had stated before Police that, the motorcycle ridden by the deceased skidded, and he fell down and sustained the injuries, and on his way to Medical College Hospital, Kottayam, he breathed his last. It is further stated in the FI Statement that, the deceased was taken to Muttuchira Holy Ghost Mission hospital in an autorickshaw.

15. It is true that, Ext.A3 final report was filed against the 1st respondent under Sections 279 and 304A of IPC, before the Judicial First Class Magistrate, Vaikom on 13.12.2010. PW4 was the Investigating Officer who laid charge sheet against the accused. CW2 Jancy and CW3 Radha Ramesan were the occurrence witnesses in Ext.A3 final report. On the complaints of the 1st respondent against Ext.A3 final report, a further investigation was ordered and RW2, the DySP attached to DCRB, investigated the case and filed Ext.B2 refer charge, after questioning the witnesses again and examining the documents. RW2 deposed before court that, when he questioned the witnesses, they did not support the statements given in Ext.A3. Moreover, the FSL Report also was sufficient to infer that no collision occurred between those

two vehicles.

16. CWs 2 and 3 in Ext.A3 final report, Smt.Jancy and Radha Ramesan, were examined by the appellants as PWs 1 and 3, before the Tribunal. Both of them did not support the case of the appellants that, the autorickshaw dashed against the motorcycle ridden by the deceased. They denied to have stated to Police that the autorickshaw dashed against the motorcycle and then the rider fell down on the road. According to them, before the Magistrate Court also, they deposed that, they did not see any collision between the autorickshaw and the motorcycle.

17. Ext.B1 FSL report is to the effect that, there was no signs of collision either head on or sidewise between the autorickshaw and the motorcycle in question. The details of the reasoning also will find a place in Ext.B1 report. If the occurrence witnesses stated to PW4 that, they had not seen any collision between the autorickshaw and the motorcycle, and the FSL report also substantiated that fact, PW4 was not justified in laying Ext.A3 charge sheet against the 1st respondent. Since the 1st respondent only took the injured to hospital in his autorickshaw as a good samaritan, he might have been that much aggrieved, when he was

made an accused in a criminal case, for the good thing done by him to an injured person. According to the 1st respondent, only because of that fact, he filed complaints against Ext.A3 final report before higher officials. In normal course, when there was already a final report against him before the Magistrate Court, the Police authorities might have obtained sanction for further investigation, and only on getting sanction, further investigation might have been proceeded with.

18. From paragraph 8 of the award, it could be seen that, the appellants were vehemently arguing about the illegality of further investigation done by RW2. He might not have done further investigation suo motu and it might have been done, after complying with all the legal formalities. Presumption under Section 114(e) of the Evidence Act also is available to think that, the further investigation was done after complying with all the procedural formalities. RW2 conducted further investigation and laid Ext.B2 final report, which is a refer charge. It is pertinent to note that no challenge was seen made by the appellants before any authorities against the further investigation or against Ext.B2 final report.

19. The learned Tribunal was specific in mind as to the non-conclusiveness of Ext.A3 as well as Ext.B2, the final reports submitted in the very same crime by PW4 and RW2. But, the learned Tribunal found that, PW4 had not taken into account Ext.B1, the forensic lab report and also Ext. B3 wound certificate indicating smell of alcohol in the breath of the deceased. Since Ext.B2 was found to be more reliable, from the materials available, learned Tribunal accepted the same, and nothing illegal can be attributed against the same.

20. The testimony of PWs 1 and 3, the eyewitnesses to the incident, would clearly show that, the pipeline work was going on, on the side of the road and the road was damaged. PW3 categorically stated that, the autorickshaw was seen parked some distance away and the rider of the motorcycle fell down on the road and sustained injuries. The incident occurred at 12.30 pm in broad daylight. If actually a collision occurred between the autorickshaw and the motorcycle, definitely, there might have been occurrence witnesses to see the incident. PWs 1 and 3, who saw the incident, were categoric in saying that, they did not see any collision between the autorickshaw and the motorcycle.

21. The testimony of PWs 1 and 3 coupled with Exts.B1 and B2, justifies the Tribunal in finding that, the accident was not due to any collision between the motorcycle and the autorickshaw, and in all probability, the deceased, who was in a drunken state, as evidenced from Ext.B3, while riding his motorcycle through a damaged road, might have fell down from the bike due to skidding, and the 1st respondent, who was there with his autorickshaw might have taken him to hospital. But the Police made him an accused. If that is true, a prudent man will think twice before taking an injured person to hospital. Innocent victims of road traffic accidents had lost their lives lying unattended for hours together with bleeding injuries, as nobody may extend a helping hand due to fear of false accusation. The 1st respondent contended that he was falsely implicated in the criminal case, simply because the injured was taken to hospital in his autorickshaw. So, he filed complaint challenging the same. It is submitted from the Bar that the 1st respondent was acquitted in the criminal case.

22. Now let us see whether there is any irregularity or impropriety in accepting Ext.B1 FSL report, without examining the person who issued the same. Learned counsel for the appellants

contended that, RW2-the Investigating Officer, who further investigated the crime, deposed before court that, only the scientific expert can say about the authenticity of Ext.B1 report. Ext.B1 is prepared by the Scientific Assistant (Documents), Forensic Science Laboratory Unit, Kottayam. That document was also relied on by RW2 to see that, no collision occurred between the autorickshaw and the motorcycle. As a general rule, the opinion of an expert requires his examination as a witness in court otherwise, the report cannot be admitted in evidence. However, Sections 292 and 293 of Cr.P.C are exceptions to the general rule as laid down in Section 273 Cr.P.C. These Sections depart from the elementary rule of law that unless the evidence is given on oath and is tested by cross examination, it is not legally admissible against the party affected.

23. Section 293(1) Cr.P.C reads thus :

> **"293. Reports of certain Government scientific experts.**—(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code".

24. Section 293(2) says that, the court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report. Section 293(4)(e) says that, the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory are Government scientific experts, to whom this Section applies. So, the report of a scientific expert issued from the State Forensic Science Laboratory is admissible in evidence without calling him as a witness as per Section 293(4) Cr.P.C. It is a piece of evidence that does not require any formal proof when it is tendered as evidence. So, this Court is of the view that, the FSL report and its contents are admissible in evidence even without examining the author and calling for its formal proof, when it is tendered in evidence. If the appellants had got any challenge against that document, they could have very well summoned the scientific expert to disprove the contents. So, the contention of the learned counsel for the appellants that the scientific report might not have been accepted without examining the author of that document, is not tenable.

25. True, it was unfortunate that a young man lost his life in a road traffic accident by falling down from his bike. It will be

equally unfortunate, if an innocent person, who tried to help the injured by taking him to hospital in his autorickshaw, was made an accused in a criminal case. To prove his innocence, he approached the authorities to enquire into the incident, and as a result further investigation was ordered, and on questioning the witnesses and examining the documents, a refer report was filed.

26. The First Information Statement, as we have seen, was laid by the brother-in-law of the deceased after 10 hours of the accident. By that time, he might have collected all the information regarding the incident. If the incident arose out of a collision between the autorickshaw and the motorcycle, definitely, he might have stated that fact in the FI statement itself. If such a collision occurred, there was no reason for PWs 1 and 3 to say that, they did not see any such collision. The road at the place of incident was damaged due to pipeline work as deposed by PWs 1 and 3. Moreover, Ext.B3 wound certificate, indicates that the deceased had consumed alcohol. Ext.B1, the FSL report, shows that, there was no collision between the motorcycle and the autorickshaw in question. When all these facts are read together, the irresistible conclusion is that, no collision occurred between the autorickshaw

and the motorcycle, and so the 1st respondent was not responsible for the accident. If the motorcycle ridden by the deceased skidded and he sustained injuries, the 1st respondent who took him to the hospital, or the insurer of his autorickshaw could not be held liable. So, the finding of the Tribunal is only to be confirmed.

In the result, the appeal fails and hence dismissed. No order as to costs.

Sd/-

SOPHY THOMAS
JUDGE

smp