

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

TUESDAY, THE 5TH DAY OF APRIL 2022 / 15TH CHAITHRA, 1944

MACA NO. 1628 OF 2013

AGAINST THE AWARD DATED 12.11.2012 IN OPMV 425/2012 OF

PRINCIPAL MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE

APPELLANT/RESPONDENT NO.3:

THE NATIONAL INSURANCE CO.LTD.
DIVISIONAL OFFICE, 2ND FLOOR NOOR COMPLEX, MAVOOR
ROAD, KOZHIKODE, REP. BY ITS MANAGER.

BY ADVS.

SRI.A.A.ZIYAD RAHMAN

SRI.LAL K.JOSEPH

SRI.V.S.SHIRAZ BAVA

RESPONDENTS/APPLICANTS 1 TO 4 AND RESPONDENT NOS.1, 2 AND 4
TO 7:

- *1 NARAYANI
AGED 39 YEARS
W/O.KRISHNANKUTTY, CHAKKALAMKUNNATH,
CHATHAMANGALAM, KOZHIKODE, NOW RESIDING AT
MANGALASSERY THOTTAM, CHATHAMANGALAM, KOZHIKODE.
- 2 SALINI
D/O.KRISHNANKUTTY, CHAKKALAMKUNNATH,
CHATHAMANGALAM, KOZHIKODE, NOW RESIDING AT
MANGALASSERY THOTTAM, CHATHAMANGALAM, KOZHIKODE.
DOB-09.06.1998 (MINOR) REP. BY MOTHER NARAYANI.
- 3 ARUN
S/O.KRISHNANKUTTY, CHAKKALAMKUNNATH,
CHATHAMANGALAM, KOZHIKODE, NOW RESIDING AT
MANGALASSERY THOTTAM, CHATHAMANGALAM, KOZHIKODE.
DOB-18.10.2000 (MINOR) REP. BY MOTHER NARAYANI.
- 4 AMMALU
W/O.KRISHNANKUTTY, CHAKKALAMKUNNATH,
CHATHAMANGALAM, KOZHIKODE, NOW RESIDING AT
MANGALASSERY THOTTAM, CHATHAMANGALAM, KOZHIKODE.

- 5 SURESH.K.P.
S/O.NARAYANAN NAIR, KEERIPOYIL HOUSE, PO
MANASSERY, MUKKOM, KOZHIKODE.
- 6 SUNIL RAJ.K.
S/O.VASUDEVAN, RESIDING AT NELLIKKAPARAMBIL
HOUSE, PO MANASSERY, MUKKOM, KOZHIKODE.
- 7 KERALA STATE ELECTRICITY BOARD
REP. BY ITS SECRETARY, KERALA STATE ELECTRICITY
BOARD, VYDYUTHI BHAVAN, TRIVANDRUM.
- 8 JOSE.K.V.
S/O.AUGUSTIN, KUNNATH HOUSE, PATHRONI NAGAR,
MARIKKUNNU, KOZHIKODE.
- 9 SOMAN
S/O.VASU, SOPANAM, VARTIYATHU PARAMBA, PAYIMBRA
PO, KOZHIKODE.
- 10 BHASKARAN
S/O.ADITYAN, VAISAKHAM, PO KALURUTTI,
NEELESWARAM, KOZHIKODE.

RESPONDENT 1 TO RESPONDENT 4 AND RESPONDENT 6 ARE
DELETED FROM PARTY ARRAY AT THE RISK OF THE
APPELLANTS, AS PER ORDER DATED 13.03.2020 IN
I.A.NO.1/2020 IN M.A.C.A.NO.1628/2013.

SRI.SUDHEER GANESH KUMAR R7

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 10.03.2022, THE COURT ON 05.04.2022 DELIVERED
THE FOLLOWING:

“CR”

M.R.ANITHA, J

M.A.C.A.No.1628 of 2013

Dated this the 5th day of April, 2022

JUDGMENT

This appeal has been filed by the third respondent/insurer against the award passed in O.P.(MV) No.425/2012 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode.

2. The claim petition has been filed by the original respondents 1 to 4 (since deleted) claiming compensation (hereinafter be referred as 'claimants') out of death of one Krishnankutty who met with an accident on 21.04.2009 at about 5.15 p.m while stepping into the stage carriage bus with Reg.No.KL-10J-2509 which is owned by the 5th respondent/1st respondent. It was contended that 6th respondent (since deleted)/2nd respondent stopped the vehicle touching the electric

line hanging over the road and the deceased was electrocuted when he was about to enter into the bus. So, according to the claimants, respondent Nos.5 and 6 as well as the appellant/3rd respondent are liable to compensate the claimants. 7th respondent/4th respondent KSEB was supplying electricity and Respondent Nos.8 to 10/respondent Nos.5 to 7 are the employees of the 7th respondent/4th respondent and they have not taken proper safety measures by tightening the hanging electric conductor to prevent the accident. So, the claimants alleged that respondent Nos.5 and 6, the appellant as well as respondent Nos.7 to 10 are liable to compensate them.

3. Before the Tribunal, respondents 5 and 6/1st and 2nd respondents filed joint written statement denying negligence on the part of the second respondent in driving the bus. It was also contended that some of the passengers entered into the bus from the bus stop. Since the deceased was not wearing foot wear at the time of accident he was electrocuted and hence it was due to the negligence of the 4th respondent that the accident happened.

4. Appellant/third respondent/insurer filed written statement admitting the policy coverage but denying the liability. It is also contended that the accident occurred due to the negligence of respondents 7 to 10. Respondents 7 to 10 filed written statement denying negligence on the part of the Board or its employees. It is contended that at the time of accident, the area was affected by lightning and due to that LTP pin insulator on the nearby post was broken and the line detached from the crossarm and hanged. Without taking proper care, the driver stopped the bus before the hanging line and that caused the accident.

5. Exts.A1 to A4 marked from the side of the claimant and Exts.B1 and B2 marked from the side of the respondents.

6. Tribunal, on evaluating the pleadings and materials, found that the accident happened due to the negligence on the part of the second respondent in stopping the bus below the hanging electric line which resulted in electrocution of the deceased who was entering into the bus. The charge against

respondents 7 to 10 is that they have not taken proper care to prevent the possible risk of any accident by keeping the line in a hanging condition. It was further found that Ext.A4 final report filed by the police after completing the investigation and there is no contra evidence adduced from the side of the respondents and hence these documents can be accepted to prove the negligence of the sixth respondent. It is also found that the documents produced are not sufficient to prove the negligence on the part of respondents 7 to 10 since the line was not separated from the post and was lying on the road and it was only in a hanging condition. Tribunal found that, it is not sufficient to hold that respondents 7 to 10 are negligent in their duties. Accordingly, Tribunal found that accident occurred due to the negligence of the 6th respondent/driver of the bus.

7. As per the order dated 13.03.2020 in I.A.No.01 of 2020, respondents 1 to 4 and 6 were deleted from party array. 5th respondent though served, there was no appearance. Adv.Sudhir Ganesh Kumar, learned Standing Counsel appeared

on behalf of the 7th respondent. Heard learned counsel for the appellant as well as the learned Standing Counsel for KSEB. Lower court records were called for and perused.

8. According to the learned counsel for the appellant, police charge is against the 6th respondent, driver of the bus as well as respondents 7 to 10, the KSEB (hereinafter be referred as 'the Board') and the employees. But, without any evidence, Tribunal arbitrarily held that the 6th respondent alone is responsible for the accident and the appellant was held liable to indemnify the insured, 5th respondent. It is illegal and unsustainable, is the contention of the learned counsel.

9. Admittedly, police charge is against the sixth respondent as well as respondents 7 to 10. No evidence adduced from either side. So, prima facie material before the Tribunal is only the police charge, copy of F.I.R and postmortem report. Postmortem report specifically certified that death was due to electrocution.

10. In **New India Assurance Co.Ltd v. Pazhaniammal : 2011(3) KLT 648**, a Division Bench of this Court held that when charge sheet is produced it will follow that the negligence is on the part of the person against whom the charge has been laid. The parties who wanted to object that has to adduce evidence to disprove the same. It is also held that production of police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under Section 166 of the Motor Vehicles Act.

11. In this case, none were examined before the Tribunal, to controvert the police charge. Respondents 7 to 10 admitted in the written statement that at the time of accident, the area was affected by lightning. Due to lightning LTP pin insulator on the nearby post was broken and the line detached from the crossarm and hanged.

12. Whenever there is thunder and lightning it is the duty of the Board and its officials to visualise the hazards resulting out of it and to take effective measures to prevent casualties out of

it. So, when police charge expressly provides that accident happened due to the negligence of the driver of the bus as well as respondents 7 to 10, the course adopted by the Tribunal in exonerating the Board and its employees in not taking proper care and caution cannot be approved. It is also curious to note that Tribunal accepted the police charge. But the reasoning for exonerating respondents 7 to 10 is that electric line was not separated from the post and lay on the road, but it was in a hanging condition only. It is not necessary that line should be separated from the post to cause hazards. It is the bounden duty of the Board and its employees to keep electric equipments and accessories intact and in proper position so as to avoid danger to the public. Normally, it cannot be imagined that the driver who is driving the vehicle will have any occasion to look into an electric line hanging. However, the incident occurred while the deceased attempted to step into the bus. Since the accident occurred during the course of entering into the vehicle, some liability can be cast upon the driver, owner and insurer of the

vehicle but the Tribunal ought not have lost sight of the liability of the Board and its employees/respondents 7 to 10.

13. Laying of charge against the sixth respondent/the driver as well as against respondents 7 to 10 by the police after a full fledged investigation as well as the cause of death in the postmortem report as electrocution would only leads to a reasonable conclusion that sixth respondent as well as respondents 7 to 10 has aided or joined in causing the death of the deceased. In other words, 6th respondent as well as respondents 7 to 10 can be treated as joint tort-feasors.

14. In this context, Chapter IX of the Law of Torts by Ratanlal and Dheerajlal updated 26th Edition by Justice G.P.Singh dealing with Joint and Several Tort-Feasors is relevant to be extracted:

"All persons who aid, or counsel, or direct or join in the committal of a wrongful act, are joint tort-feasors. Persons are not joint tort-feasors merel because their independent wrongful acts have resulted in one damnum. To constitute a joint liability the act complained of must be joint and not separate. The

joint liability arises under three circumstances:-

(i) Agency, when one person employs another to do an act which turns out to be a tort.

(ii) Vicarious liability, i.e. the liability arising from relations, such as master and servant, principal and agent, guardian and ward etc., which is discussed in Chapter VIII.

(iii) Joint action – where two or more persons combine together to commit an act which amounts to a tort.

When persons, not acting in concert, by their wrongful acts, committed substantially contemporaneously, cause damage to another person, they are not joint tort-feasors but several or concurrent tort-feasors. The damage caused by several tort-feasors may be the same or indivisible or it may be distinct referable to each tort-feasor. In case where the damage caused by each of the several tort-feasors is distinct, each of them is liable only for the damage attributable to his own act. The legal position in respect of several tort-feasors causing the same or indivisible damage is now nearly the same as in respect of joint tort-feasors.

Chapter II of Law of Torts by John Salmond dealt with Joint Wrongdoers as follows:

"Joint wrongdoers are jointly and severally responsible for the whole damage. That is to say, the person injured may sue any one of them separately for the full amount of the loss; or he may sue all of them jointly in the same action, and even in this latter case the judgment so obtained against all of them may be executed in full against any one of them (h). How far there is any right of contribution or indemnity as between the wrongdoers themselves we shall consider later.

2. Persons are to be deemed joint wrongdoers within the meaning of this rule whenever they are responsible for the same tort-that is to say, whenever the law for any reason imputes the commission of the same wrongful act to two or more persons at once. This happens in at least three classes of cases-namely, agency, vicarious liability, and common action.

15. In this context, **T.O.Anthony v. Karvarnan and others : Manu/SC/7181/2008 : 2008(3) KLT 431 : (2008) 3 SCC 748**, a two Judge Bench of the Apex Court while dealing with Sections 166 and 168 of the Act discussed the distinction between composite negligence and contributory negligence. Paragraph 6 of such decision is relevant in this context to extract

which reads thus:

"Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence."

16. In **Lallan Prasad Singh v. State of Bihar and Ors. : MANU/BH/1738/2011 : 2012(113) AIC 898**, in a writ petition filed seeking for compensation due to the electrocution of the father of the writ petitioner resulting in death due to snapping of electric wire while travelling on a bicycle alleging that the high tension electric wire running overhead fell down upon the petitioner and as a result of which the bundle of dried maize plants being carried by the petitioner's father got burnt and he fell down and was electrocuted. An F.I.R was registered in connection with the same stating that the death was due to electrocution. Controverting the allegation in the writ petition, the respondent/Bihar State Electricity Board among various other contentions has also raised a contention that as per Section 166 of the Act, any person who is aggrieved by any accident or loss can move for compensation or it can be filed by the legal representative or any one of them provided the other legal representatives are also made parties in the proceedings. It is further contended that only one major son of the deceased filed

the writ petition and hence due to lack of compliance of statutory requirements under the M.V.Act which is relevant for the purpose of deciding compensation, the writ petition is not maintainable.

17. Considering the rival contentions, the Apex Court finally found that the fact that the deceased having died of electrocution as a result of snapping of high voltage electric wire has not been controverted or proved otherwise. Ultimately, the Apex Court issued a direction to respondent Board to pay a sum of Rs.3,00,000/- to the petitioner and the disbursal was subject to the satisfaction of the Board regarding the formalities with regard to all the legal representatives coming before the Board and either agreeing to payment to the petitioner or any other person or the formula as to how the said amount should be distributed, which the Board shall take into account and make payment. The petitioner was also given liberty to move the court of competent jurisdiction for any enhancement of compensation which, according to him, would be more appropriate in that case and the court concerned was also directed to proceed on the

merits with regard to quantification of compensation if at all the petitioner or the legal representatives feels that the quantification of compensation amount is not in accordance with the amount which is legally due to them.

18. In **Khenyei v. New India Assurance Co.Ltd and Ors : MANU/SC/0582/2015 : 2015(2) KLJ 593**, a three Judge Bench of the Apex Court dealt with composite negligence in cases of compensation under the Act. In that case, the injuries were sustained by the claimant when two vehicles, that is bus and Tractor Truck collided with each other. It was a case of composite negligence where injuries have been caused to the complainant by combined act of joint tort-feasors. It was held by the Apex Court that in a case of accident caused by negligence of joint tort-feasors, all the persons who aid or counsel or direct or join in committal of a wrongful act are liable. In such case, the liability is always joint and several and the extent of negligence of joint tort-feasors in such a case is immaterial for satisfaction of the claim of the plaintiff/claimant and need not be determined by

the court and if in a case all the joint tort-feasors are before the court, it may determine the extent of their liability for the purpose of adjusting inter-se equities between them at appropriate stage. The liability of each and every joint tort-feasor vis-a-vis to plaintiff/claimant cannot be bifurcated as it is joint and several liability. In a case of composite negligence, apportionment of compensation between tort feasors for making payment to the plaintiff is not permissible as the plaintiff/claimant has the right to recover the entire amount from the easiest targets/solvent defendant.

19. In paragraph 15 of the said judgment, after quoting **T.O.Anthony** (supra) as well as **Pawan Kumar and Anr. v. Harkishan Dass Mohan Lal and Ors. : 2014(3) SCC 590**, the Apex Court has referred Charlesworth & Percy on negligence as to cause of action in regard to joint tort-feasors which is extracted below:

"42. Joint tortfeasors, as per 10th Edn. of Charlesworth & Percy on Negligence, have been described as under:

Wrongdoers are deemed to be joint tortfeasors,

within the meaning of the rule, where the cause of action against each of them is the same, namely, that the same evidence would support an action against them, individually..... Accordingly, they will be jointly liable for a tort which they both commit or for which they are responsible because the law imputes the commission of the same wrongful act to two or more persons at the same time. This occurs in cases of (a) agency; (b) vicarious liability; and (c) where a tort is committed in the course of a joint act, whilst pursuing a common purpose agreed between them."

The Court also discussed about the remedies available to one of the joint tortfeasors from whom compensation has been recovered. When the other joint tortfeasor has not been impleaded, obviously question of negligence of non-impleaded driver could not be decided apportionment of composite negligence cannot be made in the absence of impleadment of joint tortfeasor. Thus, it would be open to the impleaded joint tortfeasors after making payment of compensation, so as to sue the other joint tortfeasor and to recover from him the contribution to the extent of his negligence. However, in case when both the tortfeasors are before the court/tribunal, if evidence is sufficient, it may determine the extent of their negligence so that one joint tortfeasor can recover the amount so determined from the other joint tortfeasor in the execution proceedings, whereas the claimant has right to recover the compensation from both or

any one of them.

20. In the present case, even though both tort-feasors were before the Tribunal, based on some illegal and irrational notions, the Tribunal found that 6th respondent driver (since deleted) alone is responsible for the accident and exonerated respondents 7 to 10, the Board and its employees. It has already been found to be illegal and irrational. It has been submitted by the learned counsel for the appellant that they have already deposited the amount as directed by the Tribunal and the only relief sought for by the learned counsel is to give direction for recovery of appropriate amount from respondents 7 to 10 by finding 50% negligence on their part.

21. In the case at hand, as found earlier, police charge was laid against the driver of the bus as well as respondents 7 to 10, the Board and its employees and the death of the deceased is also undisputedly due to electrocution. In the absence of any evidence adduced from either side, the Tribunal was wrong when it found that the accident happened solely due to the negligence of the driver of the bus. The original cause for the electrocution

and death is due to the negligence of the Board and its employees in not keeping the electric line intact and permitting it to hang above the road which resulted in touching the line on the bus and electrocution of the deceased while he was stepping into the bus. So, this is a clear case of composite negligence though there is no specific evidence as to the extent of liability of each tort-feasor. That can precisely be done only after taking evidence. Since it has come out that this is a case of composite negligence, direction of the Tribunal to pay the amount by the appellant/insurer as per the contract of insurance with the insured/5th respondent (since deleted) cannot be said as illegal since the liability is joint and several. So, the finding of the Tribunal making driver of the bus alone responsible for the accident is set aside since the accident happened due to negligence of the driver of the bus as well as the 7th respondent/KSEB and respondents 8 to 10, its employees. Driver and owner of the bus/5th and 6th respondents (since deleted) and appellant/insurer as well as respondents 7 to 10 are held to be

joint tort-feasors. The right of the appellant/insurer to reimburse the amount to the extent of liability of KSEB and its employees is reserved on proving the extent of liability of each tort-feasor in appropriate proceedings in accordance with law.

Appeal disposed of accordingly. Parties shall bear their respective costs.

(sd/-) **M.R.ANITHA, JUDGE**

jsr

True Copy

P.S.to Judge