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2025:KER:38257

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

MONDAY, THE 2ND DAY OF JUNE 2025 / 12TH JYAISHTA, 1947

RFA NO. 763 OF 2016

AGAINST THE JUDGMENT DATED 30.07.2016 IN OS NO.122 OF
2013 OF COURT OF ADDITIONAL SUB JUDGE, KOTTAYAM

APPELLANT/1ST DEFENDANT:

K.R.ANTONY
AGED 59 YEARS, S/O.K.A.RAPPAI,
KUNJAMARA HOUSE, PERUMBILISSERRY P.O.,
CHERPU, THRISSUR-680561.

BY ADVS.
SRI.K.JAJU BABU (SR.)
SRI.ARJUN SANTHOSH
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS/PLAINTIFFS 1-4 & DEFENDANTS 2 TO 5:

- 1 KUNJUMOL
W/O.VINCENT BABU, PUTHEN PARAMBIL HOUSE,
KADUVAKULAM-VETTUKUZH BHAGOM, PANACHIKADU
VILLAGE, KOTTAYAM TALUK, PIN-686029.
- 2 TINTU ANNA BABU (MINOR) DOB: 12-08-2000,
REPRESENTED BY HER MOTHER KUNJUMOL,
PUTHEN PARAMBIL HOUSE, KADUVAKULAM-
VETTUKUZH BHAGOM, PANACHIKADU VILLAGE,
KOTTAYAM TALUK, PIN-686029.



- 3 TINTU MARIYAM BABU (MINOR)
DOB:25-04-2005, REPRESENTED BY HER MOTHER
KUNJUMOL, PUTHEN PARAMBIL HOUSE,
KADUVAKULAM-VETTUKUZHI BHAGOM,
PANACHIKADU VILLAGE, KOTTAYAM TALUK, PIN-686029.
- 4 SHAJI
AGED 62 YEARS, C/O. K.R.ANTONY,
KUNJAMARA HOUSE, PERUMBILISSERRY P.O.,
CHERPU, THRISSUR-680561.
- 5 RENJU
AGED 42 YEARS, C/O. K.R.ANTONY,
KUNJAMARA HOUSE, PERUMBILISSERRY P.O.,
CHERPU, THRISSUR-680561.
- 6 NATIONAL INSURANCE COMPANY
REPRESENTED BY MANAGER,
NATIONAL INSURANCE COMPANY, BRANCH OFFICE,
CHANGANACHERRY, PIN-686101.
- 7 KUTTIKKATTU BHAGAVATHI DEVASWOM
KUTTIKKATTU, DEVASOM REGISTER NO.74/90,
REPRESENTED BY PRESIDENT SABU POONTHANAM,
AGED 40 YEARS, DIVANKAVALA BHAGOM,
MOOLAVATTOM P.O., NATTAKOM,
KOTTAYAM, PIN-686013.

BY ADVS.

SHRI.S.RANJIT (K/250/1999)

SRI.GEORGE CHERIAN (SR.)

SRI.B.KRISHNA MANI

SMT.K.S.SANTHI

SRI.T.VENUGOPAL

SRI.GOKUL DAS V.V.H.

SMT.VINEETHA SUSAN ABRAHAM

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
22.05.2025, THE COURT ON 02.06.2025 DELIVERED THE FOLLOWING:



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J U D G M E N T

Dated this the 2nd day of June, 2025

The 1st defendant in OS.No.122 of 2013 on the file of the Additional Sub Judge, Kottayam is the appellant. (For the purpose of convenience, the parties are referred to as per their rank before the trial court).

2. Originally, the suit was filed by one Vincent, claiming compensation for the injuries sustained when an elephant named Bastin Vinayashankar, owned by the 1st defendant, attacked him and inflicted serious injuries to him. Thereafter, during the pendency of the suit, Vincent died and accordingly his widow and minor children were impleaded as additional plaintiffs 2 to 4.

3. According to the plaintiffs, Vincent, who was an ardent devotee of the 5th defendant- Kuttikkattu Temple, took part in the procession of the temple on 24.4.2008, as demanded by the office bearers of the temple. As demanded by them, he along with two other persons mounted the top of the elephant, and at about 4 p.m. when the procession reached near Moolavattom Railway cross, the elephant ran amok. At that time, defendants 2 and 3, who are the mahouts flee away without attempting to control the elephant. The elephant pulled Vincent down, stamped him and beat him with trunk and as a



result of which he sustained serious injuries namely, Traumatic Paraplegia, fracture 2nd lumbar vertebra, Subtrochanteric fracture of right femur, Fracture superior and inferior public rami right side pelvis, Tibial lateral condyle fracture right knee Intra articular and Tibial spine fracture. Immediately he was admitted in Medical College Hospital Kottayam and he was treated as inpatient till 2.6.2008. Because of the injuries sustained in the incident, he had been paralysed and was not in a position to do his day to day affairs without the help of others. Ultimately, he succumbed to the injuries on 11.7.2009. The compensation claimed in the suit was Rs.33,72,000/-. The 4th respondent is the insurer of the elephant and 5th respondent is Kuttikkattu Bhagavathi Devaswom.

4. In the written statement, the 1st defendant contended that Vincent along with his friend who were in an inebriated condition had provoked the elephant by embracing it by its tusk, which panicked the elephant and pushed away the plaintiff. It was at that time, he fell down and sustained injuries. Though the elephant moved little forward, it was controlled by the mahouts. It was further contended that the untoward incident occurred due to the contributory negligence of the victim. The quantum of compensation claimed



in the complaint was also challenged in the written statement.

5. The 4th defendant/ insurer filed written statement admitting that there was valid insurance policy to the elephant. According to them, as per the policy, the total liability for 3rd party personal injury for one year is Rs.3,00,000/- and for any one accident during the said one year, the liability is only Rs.1,00,000/-.

6. The 5th defendant would contend that on that day there were 12 processions arranged by the local sub temples and that those processions were under the control of persons from each '*Kara*'. Further according to the 5th defendant, they had no role in the hiring of elephant or in the accident.

7. The evidence in the case consists of oral testimonies of PWs 1 to 4 and DWs 1 to 3, Exhibits A1 to A15 and B1 to B3. After evaluating the evidence on record, the trial court found that Vincent died because of the injuries inflicted by the elephant owned by the 1st defendant and awarded a compensation of Rs.10,93,000/- along with interest @ 9% per annum. Aggrieved by the above decree, the 1st defendant preferred this appeal.

8. Heard Sri.Arjun Satheesh, the learned counsel for the appellant, Sri.George Cherian, the learned senior counsel for the 6th respondent,



Sri.S.Renjit and Sri.T.Venugopal the learned counsel for other respondents.

9. Now, on the basis of the arguments advanced, the point that arises for consideration are the following:

1) Whether the principle of strict liability applies to mischief committed by an elephant?

2) Whether the quantum of compensation fixed by the trial court calls for any interference, in the light of the grounds raised in the appeal?

10. The points: The fact that Vincent died because of the injuries sustained in the attack of the elephant belonging to the 1st defendant is not seriously disputed. From the evidence of PW2, the child of the deceased and PW3, an independent witness examined by the plaintiff also substantiates the above aspect. According to PW2, she saw the elephant pulling down her father, stamping and beating with its trunk. PW3 also adduced evidence corroborating the evidence of PW2.

11. DW2, the Veterinary Surgeon, who issued Exhibit B1 certificate also deposed that though the elephant was in normal condition in the morning, later on it became violent and attacked Vincent. Further according



to him, in order to control the elephant he had to tranquilise the elephant by firing tranquiliser. Therefore, the finding of the trial court that Vincent sustained injuries because of the injuries inflicted by the elephant and that he succumbed to the injuries because of the above injuries does not call for any interference.

12. The learned counsel for the 1st respondent/appellant, relying upon Exhibit A12 final report filed by the police in the crime registered in respect of the above incident, would argue that one M.S. Rajeev hanged on the tusk of the elephant and attacked the elephant with a lance and that is the reason for the violence of the elephant. He would also argue that this elephant never behaved violently or caused damage. It is true that though Exhibit A10 FIR was registered against the mahouts of the elephant, Exhibit A12 final report was filed by the police against one M.S. Rajeev. From Exhibit A13 judgment in CC.No.188 of 2010 on the file of the Judicial First Class Magistrate Court-I, Changanassery, it is also revealed that M.S. Rajeev was acquitted by the court.

13. Though the statement given by the deceased to the police discloses the involvement of M.S Rajeev for the elephant turning violent, the



said statement (Exhibit B3) was not proved by examining the officer, who recorded it. Therefore, the trial court was justified in holding that Exhibit B3 dying declaration of the deceased was not proved. In this case there is no reliable oral evidence to prove the exact reason for the violence of the elephant. Even then, from Exhibit A10 final report it can be presumed that the elephant ran amok because of the involvement of a 3rd person, namely M.S. Rajeev. Similarly, it can also be seen that there was no willful negligence on the part of defendants 1 to 3, for the untoward incident.

14. On the other hand, the learned counsel for the plaintiffs would argue that, even though there was no negligence on the part of the owner or mahouts of the elephant, the principle of strict liability applies in this case as the mischief was committed by an elephant, which, by its very nature, is a ferocious animal.

15. In the decision in **Madhavan v. Raja Raja Varma [1993 (1) KLT 616]**, a Division Bench of this Court, relying upon an earlier decision of the Madras High Court, held that even though there was no intent or negligence on the part of the owner or person in possession of a dangerous animal like elephant, he is liable for the damages caused by such animal. In paragraphs 8



and 9, the Court held that:

“8. We need not go into such questions elaborately in this case, since in Vedapuratti v. Koppan Nair ILR 35 Mad 708, it has been said very clearly that elephant belongs to that class of animals which is grouped as dangerous class of animals. Further, it has been held in that case that the liability of a person for any harm done by his animal independently of any intent or negligence on his part does not depend on the manner or extent to which such animals are employed, but upon the nature of the class to which such animal belongs or the particular kind of mischief committed. The learned Judges have quoted the decision of Lord Esher, MR. and also other English decisions to support their conclusions.

9. The court below also has referred to those decisions and came to the right conclusion that the defendants are liable to pay damages to the plaintiffs for the great tragedy caused to the plaintiffs by the loss of life of late Rajeswari Thampuran, a loving wife to the 1st plaintiff and an affectionate mother to the other plaintiffs, in an horrendous circumstance by the attack of a ferocious animal kept by the defendants. As we said earlier, there is no dispute at all as regards the quantum of damages. The appellants submitted that their appeal confines to their liability. In Vedapuratti v. Koppan Nair ILR 35 Mad 708, it has been said very clearly that owner as well as the person in possession of the animal, which, according to us, means the person who is in custody or immediate possession of the animal, is liable to pay compensation to the victims. The Madras High Court when said



that the owner as well as the person in possession, it has to be understood that the person in possession is the person who has got immediate control over the animal at the time when the mischief took place. In this respect, we have no hesitation to hold that the defendants are also liable to pay the compensation."

16. In the decision in **Veeramani Chettiar v. Davis and Others [2012 (4) KHC 114]**, another Division Bench of this Court while dealing with the law governing the nature and extent of liability of the owner of a dangerous animal, highlighted the necessity of enacting a comprehensive legislation in that respect and held in paragraph 9 that:

"Be that controversy as it may, first of all, we may consider the legal position, in view of the case advanced by the 1st defendant. What is the law governing the nature and extent of liability of the owner of a dangerous animal for the damage caused by such animal? In India, unlike in England, the law governing the nature and extent of liability of the owner / keeper, for the damage caused by the animal is being occupied, by English common law which are followed in decisions laid down by Indian Courts. In England now a new comprehensive and codified enactment, 'the Animal Act, 1971' is occupying the field. But in India a comprehensive legislation needs to be enacted to meet the needs of the day. The concept of legal duty and liability for the damage caused by a dangerous animal is enlarged by means of case law, by inventing the "doctrine



of strict liability" (Reylands v. Fletcher, 1908 (2) KB 825). Under the principle of Reylands v. Fletcher "a person who brings dangerous substances upon premises and carries on a dangerous trade with them is liable if, though without negligence on his part, these substances cause injury to persons or property in their neighbourhood. It is immaterial whether he is or is not aware of the danger at the time when he brings and uses them".

17. The Division Bench further held in the above decision that elephant is a dangerous animal and hence its owner/keeper is strictly liable for the damage caused by the elephant. It was also held that, contentions that the dangerous animal was provoked by the wrongful act of a third party, that it was well trained, tamed and never behaved violently or caused damage, are unsustainable defence in law. In paragraph 17 and 18, the Division Bench held that:

"17. Therefore, relying on judicial precedents as stated above, it can be safely concluded that elephant is a dangerous animal (ferae naturae) and the owner/keeper of an elephant is strictly liable, independently of negligence, for the damage caused by the elephant. The contentions that the dangerous animal was provoked by the wrongful act of a third party and thereby damage was caused, and this particular dangerous animal was well trained, tamed and never behaved violently or caused damage, are unsustainable defence in



law. This line of defence does not make any difference in the application of strict liability.

18. In the light of the above discussion, it could be held that the contentions raised by the defendant that the incident was caused by stampede, and not by the direct attack of the elephant, does not make any difference in the application of strict liability. Similarly another defence version that this particular elephant was quiet, well trained and never caused violence also does not give any exception to the elephant 'Sivan' from the category of dangerous animals, so as to escape from the liability. Therefore, we find that the defence version pleaded in the written statement, even if accepted and proved, that will not absolve the defendant from the clutches of strict liability to compensate the defendant, even if he is not negligent or careless in keeping the animal in the pooram procession, as elephant is a dangerous animal. To sum up, if a dangerous animal attacks, liability follows. The owner of a dangerous animal keeps it at his peril and is liable for all damages which it does, if it escapes."

18. Relying upon the decision in **Veeramani Chettiar** (supra), another Division Bench of this Court in **Zamoodiri Raja of Calicut an Others v. Puthiyaveettil Aysha Beevi and Others** [MANU/KE/2212/2016], also held that in such circumstances, the principle of strict liability applies.

19. In the light of the above decisions, it is to be held that since the 1st defendant is the owner and defendants 2 and 3 are the mahouts of the



elephant, which ran amok and attacked Vincent, inflicted serious injuries, which resulted in his death, the defendants 1 to 3 are liable to compensate the injuries sustained because of the death of Vincent.

20. With regard to the quantum of compensation assessed by the trial court, there is no challenge in this case. In the decision in **Anitha and Ors. v. KSEB, Thiruvananthapuram and Ors, 2014 (2) KLT 50**, a Division Bench of this Court held that for computing the compensation on account of the loss of dependency under Section 1A of the Fatal Accident Act, the guidelines formulated in **Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121**, can be followed.

21. The trial court has taken the notional income of the deceased as Rs.5,000/-, added 30% towards future prospects, applied the multiplier of 14, deducted 1/3rd towards personal and living expenses and assessed the loss of disability at Rs.7,28,000/-. Further, Rs.1,00,000/- was awarded towards pain and suffering, in addition to awarding compensation on other heads, including Rs.30,000/- towards treatment expenses, Rs.75,000/- towards loss of consortium to 2nd plaintiff and 10,000/- towards funeral expenses and Rs.30,000/- towards mental shock suffered by the plaintiffs and Rs.20,000/-



towards bystander expenses.

22. According to PW1, her husband was a loading worker getting a monthly income of Rs.7,500/-. The trial court disbelieved her testimony and fixed his notional income a Rs.5,000/-. In this case, the incident was on 24.4.2008 and death occurred on 11.7.2009. As per the decision in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.** [2011 (13) SCC 236], the notional income of a coolie in the year 2009 will come to Rs.7,000/-. If his notional income is taken as that of a coolie at Rs.7,000/-, the loss of disability alone will come to Rs.10,19,200/-. In addition to the same, the plaintiffs are entitled to get a reasonable compensation for pain and suffering, treatment expenses, funeral expenses etc. In the above circumstances, Rs.10,93,000/- awarded by the trial court is not at all on the higher side. Therefore, I do not find any grounds to interfere with the quantum of compensation awarded by the trial court.

23. Admittedly, as per Exhibit B2 insurance policy, the liability of the 4th defendant is limited to Rs.1,00,000/-. Therefore, defendants 1 to 3 are liable to pay the balance amount of Rs.9,93,000/- along with interest at the rate ordered by the trial court.



24. In the result, this appeal is liable to be dismissed and accordingly it is dismissed, confirming the judgment and decree of the trial court.

All pending interlocutory applications shall stand closed.

Sd/-
C. PRATHEEP KUMAR,
JUDGE

soil.