

Kerala High Court

State Of Kerala And M.D. Chandra ... vs Mrs. Subaida Beevi And Ors. on 16 October, 1997

Equivalent citations: 1998 91 CompCas 194 Ker

Author: P Shanmugam

Bench: P Mohammed, P Shanmugam

JUDGMENT P. Shanmugam, J.

1. The State of Kerala and the Assistant Motor Vehicles Inspector who are the respondents in the claim petition have filed separate appeals. On July 12, 1985, at about 12.45 p.m., the lorry bearing registration No. KLQ 2519 was driven by the Assistant Motor Vehicles Inspector for a test driving and in that course the lorry dashed against the deceased Muhammed Kunju Haneefa and he died consequent to the injuries. The legal representatives of the deceased filed a petition claiming compensation of Rs. 2 lakhs, The Tribunal after considering the matter awarded a compensation of Rs. 1,53,000 with interest at the rate of 12 per cent, per annum against the first and third respondents who are the appellants herein. The appeals are against this award.

2. The main contention of the learned Government Pleader is that the vehicle was brought to the RTO's office for the benefit of the owner for issuing a certificate of fitness and, therefore, the owner should be held liable and that the vehicle having been insured with the tenth respondent herein, the insurance company is liable to indemnify the liability. The learned Government Pleader argued that the finding of the Tribunal that the vehicle was driven by the Assistant Motor Vehicles Inspector for the purpose of speed testing is erroneous. He further submitted that the compensation of Rs. 1,53,000 cannot be sustained.

3. The only question that would arise for consideration is whether the Assistant Motor Vehicles Inspector who has driven the vehicle for the purpose of testing, can be held liable to pay compensation for the accident. It is an admitted case that the vehicle was brought for the purpose of renewal of the permit. When the motor vehicle is brought for renewal of the permit, the transport authorities have to inspect the vehicle and issue the necessary certificate. The relevant provisions dealing with the renewal is Section 58 of the Motor Vehicles Act, 1939, which requires renewal of a permit. Section 32 of the Act provides that no motor vehicle shall be driven without a valid registration. For the purpose of valid registration, the vehicle requires a certificate of fitness under Section 38 of the Act. The procedure of issuing certificate of fitness is contained in Rule 134 of the Kerala Motor Vehicles Rules. The relevant provision for that purpose is Sub-clause (3) of Rule 134, which is extracted below :

"Standard of inspection.--Before the issue of renewal of a certificate of fitness, the Inspecting Authority or the Registering Authority shall conduct a thorough inspection of all parts of the vehicle to ensure that they are in sound and satisfactory condition, and the vehicle in general complies with the requirements of Chapter VI of these rules."

4. From this provision, it is clear that before issuing a certificate of fitness which enables a vehicle owner to use the vehicle in a public place, the inspecting authority has to conduct a thorough inspection of all parts of the vehicle to satisfy the sound condition of the vehicle. Therefore, the said

inspection and the driving of the vehicle for that purpose cannot be characterised as a speed test or test driving. As a matter of fact, Section 120 of the Act imposes a ban on test drive or speed test without the written permission of the State Government. In our view, the Tribunal went wrong in characterising the inspection of the Assistant Motor Vehicles Inspector as reliability trials.

5. Limitation as to A5 policy condition is against the use for organised racing, pace-making and reliability trial or speeding test. The function of the Motor Vehicles Inspector and the present test of the vehicle for the renewal of its permit cannot be a racing trial or speeding test. The vehicle was brought to the RTO's office for the benefit of the owner to get the certificate which would necessarily involve the testing of a different kind than prohibited. Therefore, the policy covers the accident. In that view of the matter, the contention of learned counsel for the insurance company that the limitations of the use would operate against the claim, cannot be accepted. In our view, the insurance company is liable to compensate the sum of Rs. 1,50,000 which is covered under the policy. The award of Rs. 1,53,000 against the appellants cannot be sustained. While holding that the legal representatives of the deceased are entitled to claim the amount of compensation against the owner and the insurance company, considering the facts and circumstances of the case, their claim is restricted A to Rs. 1,50,000 with 12 per cent, interest as fixed by the Tribunal.

6. Appeals are allowed to the above extent.