

SUPREME COURT OF INDIA

State of Kerala

Vs.

E.T.Rose Lynd

C.A.No.2229 of 2012

(R.M. Lodha and H.L. Gokhale JJ.)

22.02.2012

JUDGMENT

R.M. LODHA, J.

1. Leave granted.

2. The State of Kerala through its Chief Secretary is in appeal, by special leave, aggrieved by certain directions given by the High Court of Kerala in its order dated September 17, 2008.

3. A certain P.C. Krishnakumar was travelling on the pillion of a motorcycle bearing registration No. KRH- 7599 which was ridden by Thomas John (respondent No. 2 herein) along Koimbatore-Palakkadu National Highway (East to West). On reaching Puthusserichellakkadu, the motorcycle dashed against the rear side of a stationary lorry which was parked at the national highway. The parking lights of the stationary lorry were not switched on and as a result of the impact Krishnakumar sustained serious injuries and he succumbed to those injuries on way to Palakkadu District Hospital. Legal heirs of the deceased Krishnakumar, who are respondent Nos. 3 to 5 herein, filed a claim petition before the Motor Accidents Claims Tribunal, Attingal (for short, 'the Tribunal') seeking compensation for the accidental death of Krishnakumar. In the claim petition, they alleged that the accident occurred due to the composite negligence of the owner, driver and insurer (respondents Nos. 8, 9 and 10 herein) of the truck as well as the respondent No. 2 who was riding the motorcycle.

4. The Tribunal, on consideration of the evidence on record, passed an award on June 3, 2002 in the sum of Rs. 4,76,500/- with interest at 9% per annum from November 8, 1997 till realisation in favour of the claimants. The liability was apportioned in the award as the accident was found to have occurred due to composite negligence of the two vehicles. The details of the liability are not relevant.

5. Aggrieved by the award, the present respondent Nos. 1 and 2 (owner and rider of the motorcycle) preferred appeal before the High Court of Kerala. The High Court proposed to issue some general directions to the State of Kerala and, accordingly, directed its impleadment through its Chief Secretary as respondent No. 9 in the appeal. The Division Bench of the High Court, on hearing the parties, issued the following general directions in its order dated September 17, 2008:-

1) We direct the Government to issue instruction to the Police particularly handling Traffic and the Motor Vehicles Department to seize and remove vehicles seen parked on National Highways, State Highways and other important roads, whether during day time or during night, and release such vehicles only on collecting heavy fine in accordance with law besides prosecuting the drivers.

2) The Government should direct Police and Motor Vehicles Department to ensure that goods vehicles particularly, container lorries with unusual dimensions are operated on road with proper indicator lights, reflectors, etc. on all sides during day time and night so that drivers of other vehicles get an idea about the size and dimension of such vehicles and the care they have to take to avoid accidents. In fact, having regard to the unusual size of container trucks, the Government should consider roads in which they can be permitted to operate and narrow single line roads where they should not be permitted and orders should be issued and enforced restricting their movement.

3) Large number of accidents take place on account of stopping/parking of stage carriages on road for taking and releasing passengers. This should be prohibited by constructing Bus Bays in Bus stops so that stage carriages go out of the road and take passengers and release them only on bus bays without affecting road traffic. Since this requires time, and expenditure, we direct the Government to take steps at the earliest and complete construction of Bus Bays on all road-sides in the State through which stage carriage operation is permitted, within one year from now.

4) Since accidents commonly take place in road crossings, there will be direction to the Government to instruct PWD and local authorities in charge of the road, to construct hump with zebra marking on the less important roads on all road crossings and also provide sign boards wherever required under the Rules, which should also be done within a period of one year from now.

5) Since parking of vehicles on road is prohibited by the Rules, the enforcement of which is directed above, there will be direction to the Government to provide sufficient parking space for vehicles on road side, if required by acquiring land, which should also be done within a time frame, even though we do not fix any specific time for this.

6. While giving the above directions, the High Court further observed that in order to ensure the compliance, Registry shall post the matter every three months for the Government to report periodical steps taken for compliance. The first report of the Government was required to be filed by January 1, 2009.

7. The State of Kerala is aggrieved by the directions 3 and 5 quoted above. By direction 3, the High Court has directed the State Government to take steps for construction of Bus Bays on all road-sides in the State through which stage carriage operation is permitted within one year from the date of the order. By direction 5, the State Government has been directed to provide sufficient parking space for vehicles on road side, if required by acquiring land, which should also be done within a time frame, although no time frame was fixed by the Court.

8. The High Court heavily relied upon Section 118 of the Motor Vehicles Act, 1988 (for short, 'the Act') and Rule 15(2)(iv) of the Rules of the Road Regulations, 1989 (for short, '1989 Regulations') prescribed by the Central Government.

9. Section 118 of the Act enables the Central Government to make regulations for the driving of motor vehicles by issuing notification in the Official Gazette. Pursuant to its power under Section 118 of the Act, the Central Government has prescribed the 1989 Regulations. Para 15 of these Regulations deals with the parking of the vehicle. Sub-para (1) of Para 15 provides that every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and if the manner of parking is indicated by any sign board or markings on the road side, the driver is required to park his vehicle accordingly. Sub-para (2) of

Para 15 is a prohibitory provision whereby a driver of a motor vehicle is prohibited not to park his vehicle at the places set out in clauses (i) to (xi). The High Court relied upon clause (iv) which provides that a driver of a motor vehicle shall not park his vehicle in a main road or one carrying fast traffic.

10. We are afraid, the directions given by the High Court, particularly directions 3 and 5 with which the Government of Kerala is aggrieved, could not have been issued. First, the provisions aforementioned upon which the High Court placed reliance hardly justified the above directions. Second, the High Court was hearing an appeal from an award that was confined to the grievances raised by the aggrieved party. Such general directions of wide ramifications ought not to have been given in such proceeding. Third, the facts which are relevant and germane for issuance of such directions were not before the Court. The observations by the Court, 'most of the container trucks seen on road are not fitted with proper indicators and the containers with their dull colours may not be visible from distance, more so in the night', 'similar accidents of the kind stated above are reported in this State on regular basis when vehicles driven in the night hit behind vehicles remaining parked on road' and 'in spite of repeated accidents, no steps are seen taken by the Police or Motor Vehicle authorities to seize or remove such parked vehicles from roads which can prevent accidents' are founded on general impressions. No material is available on record to support such observations. Howsoever well meaning the directions may be, yet in the absence of complete facts and materials, the exercise undertaken by the High Court was uncalled for and not necessary. Fourth, as regards directions 3 and 5, we find that certain aspects which were needed to be adverted to have not at all been adverted to by the High Court. It was important to have regard to the aspect, whether it was at all feasible to construct the Bus Bays and make the roads double lane or four lane when these roads pass through major cities, towns and thickly populated areas. The financial aspect viz., the cost of land acquisition and the cost of construction of Bus Bays throughout the State's National Highways and other roads was also required to be kept in mind. None of these aspects has been examined by the High Court.

11. Mr. Ramesh Babu M.R., learned counsel for the appellant - State of Kerala, submits that the State Government has accepted directions 1, 2 and 4 and implemented the same although a ground has been taken that such directions ought not to have been issued. In view of this, we do not intend to say anything about directions 1, 2 and 4.

12. In view of the above, we are satisfied that directions 3 and 5 suffer from serious flaw and cannot be sustained. We set aside directions 3 and 5 accordingly.

13. The Appeal is allowed to the extent above with no order as to costs.