



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

WEDNESDAY, THE 18TH DAY OF JUNE 2025 / 28TH JYAISHTA, 1947

RFA NO. 61 OF 2017

OS NO.1634 OF 2010 OF I ADDITIONAL SUB COURT, THRISSUR

APPELLANTS/1ST DEFENDANT

KUTTANKULANGARA DEVASWOM

KUTTANKULANGARA DESOM, THRISSUR TALUK, REPRESENTED BY
THE SECRETARY.

BY ADVS.

SHRI.G.SREEKUMAR (CHELUR)

SRI.K.R.ARUN KRISHNAN

RESPONDENTS/PLAINTIFF AND 2ND AND 3RD DEFENDANT

- 1 C.P.RAGHAVA PISHARADI
AGED 65 YEARS, S/O. NARAYANA PISHARADI, RESIDING AT
PALLAVUR PISHARATH, PALLAVUR DESOM, PALAKKAD DISTRICT
678001.
- 2 KOZHIMAMPARAMBU POORAKHOSHA COMMITTEE,
CHERUTHURUTHY VILLAGE AND DESOM, THALAPPILLY
TALUK, REPRESENTED BY THE SECRETARY.
- 3 THE UNITED INDIA INSURANCE COMPANY,
THRISSUR - 68 0001

BY ADVS.

SRI.M.P.ASHOK KUMAR-R1

SRI.JOHN JOSEPH VETIKAD-R3

SMT.BINDU SREEDHAR

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
9.6.2025, THE COURT ON 18.06.2025 DELIVERED THE FOLLOWING:



C.R.

J U D G M E N T

Dated this the 18th day of June, 2025

The 1st defendant in O.S.No.1634 of 2010 on the file of the 1st Additional Sub Judge, Thrissur is the appellant. (For the purpose of convenience the parties are hereafter referred to as per their rank before the trial court).

2. The plaintiff filed the above suit for damages in respect of the injuries sustained when he was attacked by an elephant belonging to the 1st defendant Devaswom. As per the plaint, the plaintiff is an artist participating with his performance in almost all famous temples in Kerala. He was an expert in performing an instrument called '*Elathalam*' and he was a member of '*Panchavadhyam*' team representing Cheruthuruthy desom in *Kozhimamparambu Pooram* festival held on 7.3.2007. The 2nd defendant was the Secretary of the *pooram* festival committee. 3rd defendant is the insurer of the elephant. During the festival, an elephant by name '*Kuttankulamgara Ramadas*', owned by the 1st defendant turned violent and at that time people gathered there ran away. In the process, the plaintiff fell down and at that time, the elephant stamped him and he sustained serious injuries including



fracture of bone. In connection with the same, he was treated in Jubilee Mission Hospital, Thrissur and he underwent two surgeries. He had to spent Rs.75,000/- towards his treatment. Moreover, he had suffered severe mental pain and agony because of the injuries sustained in the incident. Alleging that the incident occurred due to the negligence of defendants 1 and 2, the plaintiff preferred the suit claiming compensation.

3. In the written statement filed by the 1st defendant, they denied their liability to pay the compensation to the plaintiff. However, it is also contended that the elephant was insured with the 3rd defendant. The 2nd defendant in their written statement contended that the *Pooram* festival committee was an ad-hoc committee constituted for the purpose of the *Pooram* alone and thereafter the committee was dissolved. The 2nd defendant also denied the liability to pay compensation to the plaintiff.

4. After the 1st defendant filed written statement, contending that the elephant was insured with the 3rd defendant, as per order in I.A. No.4541/2014 dated 21.8.2014, the 3rd defendant/insurer was impleaded. The 3rd defendant filed written statement admitting valid insurance policy to the elephant, but denied their liability to pay compensation. Further according to the 3rd defendant, as per the policy, their liability is limited to



Rs.1,00,000/-.

5. The trial court framed four issues. The evidence in the case consists of the oral testimonies of PW1 and DW1, Exhibit A1 to A8 series and B1. After evaluating the evidence on record, the trial court found that the plaintiff sustained injuries because he was attacked by the elephant belonging to the 1st defendant, awarded a compensation of Rs.75,000/- and directed the 1st defendant to pay the same. The trial court exonerated the 3rd defendant/insurer on the ground that the 3rd defendant was impleaded in the suit after the period of limitation and as such the claim against the 3rd defendant is barred by limitation. Aggrieved by the above judgment and decree of the trial court, the 1st defendant preferred this appeal.

6. Now the points that arise for consideration are the following:

- 1) Whether, in a suit for damages filed against the tortfeasor within the period of limitation, the insurer impleaded thereafter can raise the plea of limitation?*
- 2) Whether the impugned judgment and decree of the trial court calls for any interference, in the light of the grounds raised in the appeal?*

7. Heard Sri.G. Sreekumar Chelur, the learned counsel for the



appellant, Sri. M.P. Ashok Kumar, the learned counsel for the 1st respondent/claimant and Sri. John Joseph Vettikkad, the learned Standing Counsel for the 3rd respondent/insurer.

8. Points 1 and 2: At the time of arguments, the fact that the plaintiff sustained injuries when he was attacked by the elephant belonging to the 1st defendant was not disputed. The quantum of compensation awarded by the trial court was also not challenged by any of the parties. The main argument raised by the learned counsel for the appellant was to the effect that, when there was valid insurance policy for the elephant with the 3rd defendant, the trial court was not justified in exonerating the 3rd defendant and mulcting the liability entirely on the 1st defendant.

9. On the other hand, the learned Standing Counsel for the 3rd respondent/insurer would argued that, since the 3rd defendant was impleaded after the period of limitation for filing the suit, the trial court was justified in exonerating the 3rd defendant. The learned Standing Counsel has relied upon Order I Rule 10(5) CPC as well as Section 21 of the Limitation Act in support of his argument that once a party is impleaded in a suit subsequent to its institution, as against that party the suit is deemed to have been instituted only from the date of the impleadment.



10. Order I Rule 10(5) CPC states that subject to the provisions of the Indian Limitation Act, 1877, section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

11. Section 21(1) of the Limitation Act reads as follows:

“21. Effect of substituting or adding new plaintiff or defendant.

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

12. The above proviso to Section 21(1) states that if the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith, it may direct that the suit as regards such a party shall be deemed to have been instituted on any earlier date.

13. The learned counsel for the 3rd defendant has relied upon the decisions in **Mahadeva Rao v. S.G.Chickanageswariah** [1981 KHC 1837], **Ramalingam Chettiar v. P.K. Pattabiraman and Another** [(2001) 4 SCC



96], **Joseph K.J v. Manager, New India Assurance Co.Ltd., Kottayam and Others** [2014 (10 KHC 607], and **Chami Narayanan v. Krishna Iyer** [1998 KHC 390] in support of his above argument.

14. As per the above decisions also, if a party is newly added as plaintiff or defendant, the suit shall as regards that party be deemed to have been instituted when he was so made a party. At the same time, if the court is satisfied that the omission to include the new party was due to a mistake made in good faith, the court may direct that the suit as regards him shall be deemed to have been instituted on any earlier date.

15. Relying upon the decision of a learned Single Judge of this Court in **Kerala State Insurance Department, Kozhikode v. P. Rajan** [2022 94) KLJ 500], the learned counsel would argue that in a case where the insurance company was mistakenly impleaded and thereafter the correct insurer was impleaded after the period of limitation, this court held that it was a *bona fide* mistake and in the light of the proviso to section 21(1) of the Limitation Act, it was treated that the newly added defendant was there in the party array even at the time of filing the suit. In paragraph 12, the learned Single Judge held that :

“12. Ordinarily, going by Section 21 of the Limitation Act, the proceedings



as regards the additional respondents sought to be impleaded will be deemed to have been instituted only when such respondent is made a party. However, the proviso to Section 21 contemplates that where the court is satisfied that the omission to include a party was due to a mistake made in good faith, the court can direct that the suit as regards such new party shall be deemed to have been instituted on an earlier date. This Court is of the opinion that the first respondent/claimant is well within his limits in embarking on the proviso to Section 21, since the appellant/R3 was made a party acting under a bona fide mistake. It was in good faith that the appellant/R3 was made a party on the belief that the vehicle in question was covered by a policy issued by the appellant/insurance department. In such circumstances, this Court is of the view that the first respondent/claimant is entitled to the benefit of the proviso to Section 21 and he, in the overall facts and circumstances, is liable to be protected against the plea of limitation.”

16. In this case, the incident in question was on 7.3.2007, while the 3rd defendant was impleaded as per order in I.A.No.4541 of 2014 only on 21.8.2014. Therefore, it is evident that the 3rd defendant was impleaded in the suit after the period of limitation of three years. It was argued by the learned counsel for the appellant and 1st respondent/plaintiff that, in this case, the plaintiff had no independent cause of action against the 3rd defendant and as such the decisions relied upon by the insurer cannot be applied in this case.

17. The plaintiff filed the suit claiming compensation for the injuries sustained because of the attack of an elephant belonging to the 1st defendant.



As far as the suit filed by the plaintiff is concerned, the 3rd respondent is a stranger and a third party. The Suit was originally filed against defendants 1 and 2 alone. The 3rd defendant was impleaded as a party only because of a contract between defendants 1 and 3 whereby the 3rd defendant contracted to indemnify the damages payable by the 1st defendant on account of the mischief committed by the insured elephant. In effect, the 3rd defendant was impleaded at the instance of the 1st defendant. As argued by the learned counsel for the plaintiff, at the time of filing the suit, the plaintiff might not have been aware whether the elephant was insured and the details of the insurer. Only after the 1st defendant filed their written statement, they disclosed that the elephant was insured with the 3rd defendant and only thereafter, the plaintiff could implead the 3rd respondent in the party array.

18. In a similar situation in **Oriental Insurance Company v. Ananda Pai** [2002 KHC 57] the claim petition was filed on 7.2.1992 and the insurer was impleaded only on 11.10.1996. The insurer has taken a contention that since they were impleaded only on 11.10.1996, they are not liable to pay interest for the compensation awarded in the case, till 11.10.1996. Rejecting the above contention raised by the insurer, the Division Bench held in paragraph 2 as follows:



"(2.) We are unable to accept this contention because the role of the appellant is only as an indemnifier. The primary liability is cast on the driver and the owner of the vehicle. It was on the basis of the contractual relationship subsisting between the owner and the appellant that the appellant undertakes to discharge the liability cast on the owner. The owner has the liability to pay interest on compensation from the date of application viz., 7.2.1992. In such circumstances, the appellant, whatever be the date, cannot shirk out of that liability and contend that the appellant will pay interest only from 11. 10.1996."

19. The learned counsel for the 3rd respondent would argue that the above decision relates to a claim under the Motor Vehicles Act and as such it cannot be applied in a suit of the present nature. It is true that the above decision was rendered by the Division Bench in a claim under the Motor Vehicles Act. However, the principle involved in both the cases is identical. Therefore, the above principle is applicable in the present case also. As held by the Division Bench, the primary liability, in this case is also, on the owner of the elephant and it was on the basis of the contractual relationship subsisting between the owner of the elephant and the insurance company, the liability of the insurance company arises and hence the 3rd respondent in this case cannot take a contention that they are not liable to indemnify the 1st defendant and thereby defeat the very purpose for which the insurance policy was taken by the 1st defendant. Therefore, I do not find any merits in the



above argument advanced by the learned counsel for the 3rd respondent.

20. In the light of the decision in **Ananda Pai** (supra), it is to be held that, in the case of impleadment of a party, who has contracted with another to indemnify the third parties, in a pending proceeding, against whom the plaintiff has no independent cause of action, the provisions of O.1R.10(5) CPC and Section 21 of the Limitation Act does not strictly apply. Since the 3rd defendant herein has been impleaded on the basis of the contract entered into with the 1st defendant and the plaintiff has no independent cause of action against the 3rd defendant, the decisions relied upon by the learned counsel for the 3rd defendant referred above have no application in the facts of the present case.

21. Moreover, in this case also, the proviso to Section 21(1) of the limitation Act is to be applied because there was no willful default on the part of the plaintiff in impleading the insurance company. They came to know about the insurer only through the written statement filed by the 1st defendant. Therefore, the delay in impleading the insurer was due to a *bona fide* mistake and on that ground also the impleadment of the 3rd defendant is to be treated as from the date of the suit and not from the date of impleadment. If so, the judgment and decree of the trial court exonerating the 3rd defendant on the



ground of limitation is liable to be set aside. In the above circumstances, the appeal preferred by the 1st defendant challenging the judgment and decree mulcting the liability on him is liable to be allowed and the 3rd defendant in the suit is to be directed to pay the compensation to the plaintiff.

22. In the result, this appeal is allowed. The judgment and decree of the trial court exonerating the 3rd defendant is set aside and the 3rd defendant/insurer is directed to pay the compensation ordered by the trial court, to the plaintiff.

All pending interlocutory applications shall stand closed.

Sd/-
C. PRATHEEP KUMAR,
JUDGE

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