

(2012) 09 KAR CK 0198
In the Karnataka High Court
Case No : M.F.A. No. 5066 of 2009 (MV)

Bangalore Metropolitan Transport Corporation

APPELLANT

Vs

Amjad Khan

RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Citation : (2013) 1 AKR 628

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : D. Vijaya Kumar, for the Appellant; Sunitha B.H. and Suresh M. Lathur, for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J.—The respondent in MVC. No. 2505/2003 on the file of MACT, Bangalore, has come up in this appeal impugning the judgment and award dated 12.3.2009 passed in the aforesaid proceedings. Brief facts leading to this appeal are as under: The claimant before Tribunal is said to have met with an accident on 7.4.2003 at about 9.30 a.m. on N.R. Road, near Bamboo Bazaar. Bangalore, due to rash and negligent driving of BMTC bus bearing No. KA-01/F.802 resulting in injuries to his left foot i.e., fracture of metatarsal bones and also injuries to calcaneum. II is Mated that police complaint was lodged on the same day at about 11.30 a.m. Subsequently, charge-sheet was filed on the driver of aforesaid offending bus and thereafter, claim petition was filed seeking compensation for the alleged injuries said to have suffered by claimant in the aforesaid road traffic accident.

2. It is stated that Tribunal on appreciation of oral and documentary evidence available on record proceeded to allow the claim petition awarding compensation in a sum of Rs. 67,100/- payable with interest at 7% p.a., from the date of petition till payment of entire amount. Being aggrieved by the same, appellant herein initially filed appeal in MFA. No. 8053/2006. When said appeal came up for final disposal, this Court on appreciation of the grounds of appeal allowed the

same by judgment dated 17.9.2007 and remanded the matter back to Tribunal for fresh consideration independently with the material available on record. It is seen that even after the matter was remanded, Tribunal after hearing the parties has reiterated the very same judgment and re-allowed the claim petition for the same compensation. Being aggrieved by the same, this appeal is filed by appellant for the second time challenging the revised judgment and award dated 12.3.2009.

3. Heard the Counsel for appellant and respondent. On going through the impugned judgment with reference to grounds of appeal, it is seen that alleged accident is said to have taken place on 7.4.2003 at about 9.30 a.m., on a busy road in market area. The actual place of accident is said to be at N.R. Road near Bamboo Bazaar as per Ex. P4, the sketch of place of accident. On perusal of Ex. P4 it shows that the bus which is plying from east to west on N.R. Road is taking a left turn in the first cross of N.R. Road. According to appellant, this bus does not ply in the first cross. The offending bus was on a route between City Market to Choodasandra. Incidentally, the offending bus was handed over to its driver by name Krishna with badge No. 9104 at about 11.40 a.m., on 6.4.2003 and the said driver was required to surrender the vehicle back in shed on 7.4.2003 at about 11.00 a.m., after completion of 24 hours duty. It is also stated that said bus was stated to be parked in Choodasandra on 6.4.2003 night and was suppose to start its first trip on 7.4.2003 morning from Choodasandra to City Market.

4. According to appellant, as per Exs. R1 and R2, which are trip sheet and log trip produced and marked through RW. 1 are the documents which are maintained by appellant-Corporation in its usual course of business in respect of offending bus. It is also stated that similar documents are maintained in respect of all the buses, which ply in appellant-corporation. So far as Exs. R1 and R2 which pertains to offending bus disclose that on 6.4.2003 bus was entrusted to its driver Krishna and he was in charge of said bus till 11.00 a.m., on the next day. According to him, as per trip-sheet, Ex. R1, said bus left City Market at about 8.30 a.m., on 7.4.2003 and reached Choodasandra at 9.30 a.m., on the same day. Assuming for a moment, if the bus is at Choodasandra at 9.30 a.m., and which place it left on the same day at 10.10 a.m., it reached City Market at 11.05 a.m., and from there it went to shed. This trip-sheet is maintained by the Conductor and counter signed by the Ticket Inspector throughout the way. Nowhere, it is seen that said bus was stopped for unusually longer length of time thereby missing any of the trips or delay in trips for that day.

5. Assuming for a moment, accident is said to have taken place at 9.30 a.m., on that day involving the aforesaid bus near Bamboo Bazaar, it is unbelievable with the crowd which would gather in that place to allow the bus to move further to carry passengers to its place of destination i.e., Choodasandra, and definitely that bus would have been handed over to jurisdictional police station for causing accident. It is further seen that there is no deviation or variation in the schedule

of said bus for 7.4.2003 as could be seen from Exs. R1 and R2. In that view of matter, Tribunal should have seriously considered these documents which are the documents maintained by a State run corporation with its responsible officers maintaining the log of movement of each vehicle as against self-serving statement of claimant, which do not stand to reason. As stated earlier in such a busy area at 9.30 a.m., in the morning hours, if accident had really taken place, definitely the bus would not have completed any of its remaining trips for the day except going to police station.

6. In the instant case, it is also demonstrated before Tribunal that neither the bus was apprehended at the place of accident nor the driver and conductor were taken to the custody of police. Assuming for a moment, such incident has taken place, definitely the driver and conductor would not have been allowed to move from the place of accident. Therefore, the theory of accident being caused by offending BMTC bus on 7.4.2003 at 9.30 a.m., on N.R. Road, near Bamboo Bazaar appears to be highly doubtful. If accident itself appears to be highly doubtful, then question of holding that claimant suffered injuries in the accident caused by said bus and appellant corporation is liable to pay compensation is highly improbable. Intact as could be seen from records such doubt did persist in the mind of this Court while dealing with MFA. No. 8053/2006 and in view of said doubt, this Court remanded the matter back to Tribunal to reconsider the same on appreciation of all the documents available on record.

7. However, there is an error on the part of Tribunal in not appreciating those documents, inasmuch as, accepting Exs. R1 and R2 are documents in respect of movement of offending bus for 6.4.2003 and 7.4.2003. On going through the finding of Tribunal on the trip sheet and log trip with reference to said documents it is clearly seen that there is error on the part of Tribunal in appreciating these two documents. The finding of Tribunal that log trip and trip sheet are for 6.4.2003 is incorrect in view of Exs. R1 and R2 which are in respect of offending bus for a period of 24 hours commencing from 11.40 a.m., on 6.4.2003 which would come to an end at 11.00 a.m., on the next day i.e., 7.4.2003 and which is also corroborated by the notings on right side of log trip that schedule of bus has come to an end at 10.50 a.m. on 7.4.2003. Assuming for a moment, accident has taken place involving aforesaid bus, as observed by this Court earlier the offending bus would not have completed any of its trips subsequent to 9.30 a.m., on 7.4.2003.

8. Even otherwise, in terms of Exs. R1 and R2, at the relevant time the offending bus was at Choodasandra as rightly demonstrated by the witness of appellant Corporation, namely, RW. 1, There is indeed error on the part of Tribunal in not appreciating the available material on record. Even though an opportunity was given to Tribunal to reappraise the same, it has again committed the very same mistake. In that view of matter, this Court finds that there is no justification to accept the erroneous judgment which is re-rendered by Tribunal in not appreciating the material on record. Therefore, this Court feels that it would

be sufficient to hold that the material on record clearly discloses non-involvement of aforesaid BMTC bus either at 9.30 a.m., on 7.4.2003 or at any point of time on that day, inasmuch as, said vehicle not being apprehended by police or by public either at the place of accident or in any other place in and around that area on that day clearly discloses there is no probability of involvement of said vehicle in the accident. In that view of matter, this Court finds there is genuine error on the part of Tribunal in appreciating the material on record while deciding the claim petition filed by respondent herein. Therefore, the appeal filed by appellant-corporation requires to be allowed. Accordingly, the appeal filed by appellant corporation is allowed. Consequently, the judgment and award dated 12.3.2009 passed in MVC. No. 2505/2003 on the file of MACT, Bangalore, is set aside.