

(2015) 09 KAR CK 0333

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4995 of 2014 (MV)

Bangalore Metropolitan Transport Corporation

APPELLANT

Vs

C. Raghunandan

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2015) 4 AKR 473

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : D. Vijaya Kumar, for the Appellant; J.G. Chandra Mohan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J—The Bangalore Metropolitan Transport Corporation ("the Corporation" for short) has filed this appeal challenging the judgment and award in MVC No. 3266/2012 dated 05.02.2014 on the file of the Motor Accident Claims Tribunal, XXIV Additional Small Causes Judge, Bangalore.

2. The respondent/claimant filed the claim petition in MVC No. 3266/2012 against the Corporation seeking compensation on account of the injuries sustained by him in a motor vehicle accident occurred on 02.03.2012. According to the claimant, on 02.03.2012 at about 10.30 A.M. while he was walking towards Yelahanka New Town bus stand, a bus bearing registration No. KA-01-F-3325 belonging to the Corporation came from the opposite direction namely, from the diary circle towards the bus stand in a rash and negligent manner and dashed against him. He sustained grievous injuries in the accident. He was admitted to Deeksha hospital. Later he was shifted to Columbia Asia Hospital. He was aged 65 years at the time of the accident and was earning a sum of Rs. 20,000/- p.m. In all, he has claimed compensation of Rs. 20 lakhs.

3. The Corporation has filed the objections denying the petition averments. It has contended that the bus bearing No. KA-01-F-3325 was not involved in any

accident. The bus completed its schedule from Yeshwanthpura to Rajakpalya at 10.20 A.M. and in the middle of the route before reaching Yelahanka New Town bus stand it developed mechanical problems. Therefore, the driver took the bus to the Depot No. 11 for repair by canceling the schedule trip. The bus was at the Depot at about 11.00 A.M. It was repaired at 11.45 A.M. The respondent has also denied that the claimant was injured in the accident or that he was taken to the hospital. It has denied the age and income of the claimant.

4. On the basis of the pleadings of the parties, the Tribunal has framed the following issues:

"1. Whether the petitioner proves that he sustained grievous injuries in a road traffic accident due to involvement of BMTC bus bearing Reg. No. KA-01-F-3325 on 2.3.2012 at about 10.30 A.M. by its rash and negligent driving as alleged in the petition?

2. Whether the petitioner is entitled for compensation? If so, to what extent and from whom?

3. What order or award?"

5. The claimant was examined as PW-1. The complainant was examined as PW-2 and the doctor was examined as PW-3. The documents Ex. P1 to P19 were marked in their evidence. The driver of the bus was examined as RW-1 and the conductor was examined as RW-2. The documents Ex. R1 to R3 were marked in their evidence.

6. On appreciation of the materials on record, the Tribunal has held that the claimant had sustained grievous injuries in the road traffic accident due to the involvement of the offending bus. The Tribunal has awarded total compensation of Rs. 9,81,000/- with interest at 6% p.a. on Rs. 9,66,000/- from the date of the petition till the date of the deposit.

7. The contention of the learned counsel for the Corporation is that the bus has not met with an accident as alleged on 2.3.2012. The complaint was lodged on 4.3.2012 at about 11.30 A.M. The claimant has not established the involvement of the bus in the accident. He has taken me through the evidence of the parties. It is argued that the claimant has not proved his income. The employer of the claimant was not examined in support of the contention that he was earning a sum of Rs. 20,000/- per month.

8. On the other hand, learned counsel appearing for the respondent has sought to justify the impugned judgment and award. It is argued that the PW-2 being the daughter of the deceased had to first attend to her father who was admitted to the hospital. It is only thereafter, she lodged the complaint. The evidence on record clearly establishes that the bus in question was involved in the accident. The findings of fact recorded by the Tribunal do not call for interference. It is argued that the compensation awarded by the Tribunal is just and reasonable.

9. Having regard to the contentions urged, the first question for consideration is whether the bus in question was involved in the accident?

10. The specific case of the claimant is that on 02.03.2012 at about 10.30 A.M., while he was walking towards Yelahanka New Town bus stand, the offending bus came from the opposite direction in a rash and negligent manner and dashed against him. The defence set up by the Corporation is that while the bus was coming from Yelahanka to Rajakpalya at about 10.20 A.M., it developed certain mechanical problems. On the middle of the route, the middle door of the bus did not operate and the right wheel was jammed. Therefore, the bus was taken to Depot No. 11 for repair by cancelling the schedule trip. The bus was at Depot No. 11 at about 11.00 A.M. on that day. It was repaired at about 11.45 A.M.

11. The claimant was examined as PW-1. He has reiterated in his examination-in-chief what has been stated in the claim petition. In his cross examination, he has stated that approximately at about 10.30 A.M., the bus dashed against him. Before the accident, he has seen the route number of the bus. After the accident, the police took him to the hospital. It is thus clear that before the accident he has seen the route number of the bus. He has denied the suggestion that before the bus could reach the Yelahanka bus stand it faced mechanical problems and it was taken to Depot No. 11 for repair.

12. PW-2 is the complainant. She has stated that she got the message at about 10.45 A.M. to her phone number about the accident. Immediately, she rushed to Deeksha Hospital and saw her father injured in the accident. She was examined on 03.06.2013 about one year, three months after the date of the accident. On account of the passage of time, there may be some discrepancy in her evidence with regard to the timing of the message received by her. She has stated that her father was hospitalized and was in emergency care. As such it was not possible for her to lodge the complaint immediately. Thus, she has explained the reasons for the delay of two days in filing the complaint.

13. The Driver of the bus was examined as RW-1. In his examination-in-chief, he has stated that on 2.3.2012, he was manning the offending vehicle. The bus in question has not caused the accident. The bus was on its schedule trip from Yeshwanthpur to Rajakpalya. In the middle of the route i.e., near Mathikere, the middle door did not operate and the right wheel of the bus was also jammed. Therefore, he requested the conductor not to get any passengers. The bus was taken to Depot No. 11 at about 11.00 A.M. In his cross examination, he has stated that whenever the bus faces any mechanical problems, the same has to be informed to the Depot Manager. However, he has informed the said mechanical problems to the Depot Manager. When he took the bus to the Depot all the passengers had got down at Yelahanka bus stand and thereafter, he proceeded further. Thus, it is clear that the bus had reached Yelahanka bus stand.

14. The conductor was examined as RW-2. He has clearly stated that when the bus comes to the Depot and goes out, there will be an entry in the depot. In

order to go to Depot No. 11, it has to go through Yelahanka bus stand. He has not made any entry in the trip sheet.

15. Ex. P4 is the discharge summary of the Mallya Hospital. The history and examination of the patient is recorded on 2.3.2012 as under:--

"1. Alleged h/o RTA on 2.3.2012 around 10.45 A.M. near Upanagara bus stand, the patient a pedestrian hit by bus after which he sustained injury to right eye, face, both lower limbs, chest, back and left UL.

2. Patient initially treated at Columbia Asia Hospital and later shifted here for further management."

It is clear from this document that the road traffic accident had occurred on 2.3.2012 at about 10.30 A.M.

16. The case put forth by the Corporation that the bus has not reached Yelahanka bus stand cannot be accepted, having regard to the evidence of the driver and conductor of the bus. The driver has stated that before the bus was taken to the depot, all the passengers had got down at Yelahanka bus stand. The conductor has admitted that in order to go to the depot No. 11, it has to go through Yelahanka bus stand. The appellant - Corporation has not produced any documents to show that the bus was taken to the depot for repair. The oral and documentary evidence on record clearly establishes that the bus in question had caused the accident. The findings of fact recorded by the Tribunal is on the appreciation of the materials on record and I do not find any error in the said findings. The first question is answered accordingly.

17. That brings me to the next question as to whether the compensation awarded by the Tribunal is excessive?

18. Dr. Sunil Kumar was examined as PW-3. It is clear from his evidence that the claimant was hospitalized for 14 days. The salary slip of the claimant for the month of February 2012 is at Ex. P7. From this document, it is clear that he was drawing a salary of Rs. 16,125/- per month and after deducting professional tax, he was drawing a net salary of Rs. 15,925/- per month. It is also clear that he was working at Vyedhi Institute of Rehabilitation, Bangalore. He was aged 65 years. However, the Tribunal has taken his salary at Rs. 10,000/- per month and accordingly, a total compensation of Rs. 4,20,000/- is awarded towards loss of future earning capacity. It is clear from the evidence that the permanent disability to the whole body is 50%. The claimant had lost his right eye due to the accident. The compensation awarded under other heads is also just and reasonable. There is no merit in this appeal. It is accordingly dismissed. No costs.