

(2003) 02 KAR CK 0016

In the Karnataka High Court

Case No : C.R.P. No. 5344 of 2001 and batch

B.S. Chandrappa (since deceased) by widow Anusuya and
Others

APPELLANT

Vs

Shobha and Others

RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Citation : (2003) ACJ 1770 : (2003) 2 KCCR 1090 : (2003) 3 RCR(Civil) 414

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

**Advocate : K.T. Gurudeva Prasad, for the Appellant; H.G. Ramesh and Jaya
Vikram, SC, for the Respondent**

Final Decision : Dismissed

Judgement

A.V. Srinivasa Reddy, J.—These petitions and appeals are preferred by the owner of Tempo bearing registration No. MEZ 9797 which was involved in the accident, being aggrieved by the judgment and award of the Tribunal dated 27.8.2001, passed in M.V.C. No. 1257 of 1988 and connected cases on the file of the Addl. M.A.C.T., Udupi apportioning the liability between Tempo and the bus bearing registration No. CTX 9373 in proportion of 25:75. As the only question involved in these petitions and the appeals is the correctness or otherwise of the apportionment of liability in the above stated ratio, these petitions and the appeals are taken together and disposed of by this common judgment.

2. There is no appeal by the claimants for enhancement of the compensation, nor is there any appeal by the insurance company questioning its liability vis-a-vis the bus involved in the accident which, admittedly, is insured by it. All these petitions and appeals have been filed by the owner of Tempo calling in question the apportionment of liability by the Tribunal on the ground of contributory negligence by the driver of Tempo.

3. I have heard the learned Counsel Mr. K.T. Gurudeva Prasad who appears for

the petitioners and the appellants as also Mr. H.G. Ramesh, learned Standing Counsel for respondent Nos. 3 and 4.

4. The learned Counsel for petitioners-appellants very strenuously submitted that the accident took place entirely on account of the rash and negligent driving of the bus in question and the driver of Tempo had not contributed to the accident in any manner whatsoever. The learned Standing Counsel Mr. H.G. Ramesh for respondent Nos. 3 and 4, on the other hand, supported the finding of the Tribunal apportioning the negligence to the drivers of the bus and Tempo in the ratio of 75:25. It is submitted by him that Tempo was at fault in overtaking the motorcyclist and in coming on to the middle of the road without taking care to notice the oncoming vehicle.

5. In the light of the submissions as aforesaid, the following point arises for my consideration: Whether the Claims Tribunal was right in apportioning negligence to the drivers of the bus and Tempo in the ratio of 75:25?

6. Bus and Tempo collided head-on, collision taking place in the middle of the road. The sketch of the scene of the offence was not produced before the Tribunal and it is not clear from the records as to whether the sketch of the scene of offence was at all drawn by the police. 13 persons had died on the spot and among the several injured persons, two persons died during their course of treatment thus bringing the tally of the dead persons alone to 15. The dead included the driver of Tempo. The only eyewitness Sudhakar Amin, who is examined as PW 2 in the M.V.C. No. 461 of 1989, has deposed that the Tempo had just overtaken a motor cycle and in that process had come on to the middle of the road when the bus came from the opposite direction and dashed against Tempo. The resultant impact was such that Tempo was smashed, pushed back by the speeding bus to a considerable distance and ultimately it turned turtle down the road. The spot mahazar drawn up by the police refers to the speed of the vehicles involved in the following terms:

(Omitted as in vernacular)

The deposition of the eyewitness and the contents of the spot mahazar drawn by the police leave nothing to doubt that the accident took place on account of the rash and negligent driving of both the vehicles involved in the accident. Therefore, contention of learned Counsel for petitioners-appellants that the accident took place on account of the rash and negligent driving of the bus alone and there was no negligence on the part of the driver of Tempo whatsoever is not well-founded. There is no doubt in the present case that the accident had occurred because the two drivers who were on a collision course could not manoeuvre their vehicle so as to steer clear off each other. Thereby it follows that both the vehicles were being driven at a high speed and both were rash and negligent and each of them had lost control of their respective vehicles. The issue to be determined in the present case which is one of composite negligence is how the court should apportion the liability while fixing the responsibility on

the erring drivers.

7. The version of the sole eyewitness and the injured witnesses speaks volumes of the high speed at which the bus was being driven. The bus did not come to a halt even after impact and proceeded further in the process pushing the van to some distance on the road and ultimately toppling it. This fact and the high number of deaths resulting therefrom is a definite indication of the speed and the negligent manner in which the bus in question was being driven at the time of the accident. But for the fact that the van veered away from its path while overtaking the motorcyclist and thereby came on to the middle of the road, the entire blame for the accident could have been fixed on the driver of the bus. The learned Counsel on both sides cited several decisions in support of their respective contentions on the point involved.

8. In *Karnataka State Road Transport Corporation, Bangalore Vs. K.Chandrasekhara Raju*, , this Court has laid down that in a case where the driver of the bus who caused the accident was not produced by the Corporation to explain the manner of accident despite the fact that he was in the employment of the Corporation and no explanation was furnished for his non-examination. The Tribunal was right in drawing an adverse inference against the Corporation. The driver of the offending bus in the present case has not been examined by the owner of the bus though he was very much available for such examination. In the absence of such rebuttal evidence by the bus driver it is rather difficult to find fault with the apportionment of negligence by the learned Tribunal. In *Andhra Marine Exports (P) Ltd. v. P. Radhakrishnan* 1984 ACJ 355, a Division Bench of the Madras High Court has expounded the principles of 'composite negligence' and 'contributory negligence' and their effect. In the present appeal there is no dispute, at all, that the accident had occurred on account of the composite negligence of the drivers of the bus and Tempo in question. The appellants herein are, therefore, entitled to sue the owners of both the vehicles without being driven to any analysis to find out whom he can sue. In *Devkinangan Bangur and Others Vs. State of Haryana and Others*, , a learned single Judge of the Punjab and Haryana High Court reached the conclusion that the bus in question was driven at a fast speed and rashly and negligently by relying on the circumstance that three of the occupants of the car died in the accident. It is well-known principle of law that the magnitude of the accident is a definite yardstick to gauge the speed and negligence with which a vehicle was driven because the more the speed the larger the magnitude of the accident invariably would be. The decision in *Labh Singh Vs. Bhagwant Singh and Another*, , deals only with the quantum of compensation and the rate of interest to be awarded. We are not concerned with these aspects in the present appeal. In *Oriental Insurance Company Ltd. Vs. Rekha Gupta and Others*, , the court was seized of a matter in which there was a head-on collision between a bus and car. The driver of the offending bus which came on the wrong side of the road at great speed and dashed against the car coming in the opposite direction was held to be solely responsible for the accident. In the case on hand the accident

took place on the middle of the road and it was not deposed by any one of the witnesses that the bus came on the wrong side. The reference of the sole eyewitness in his deposition is only to the speed with which the bus was being driven. The principle applied in the said decision, therefore, cannot be applied to the facts of the present case to hold that the bus alone is responsible for the accident that had occurred. In an unreported decision of this Court in Ramadas v. Vivekanand, (decided on 15.6.1999) a Division Bench of this Court considering the fact that the accident took place just in the middle of the road and there was negligence ex facie of both Tempo driver and the rider of the motor cycle, had assessed contributory negligence at 50 per cent. In these appeals and revisions we are concerned with the claims of third parties alone and the question of assessing contributory negligence does not arise. The Tribunal has assessed the contributory negligence of the driver of Tempo in question at 25 per cent in the claim petition filed by the L.Rs. of the deceased driver of Tempo. The principle of contributory negligence will have no bearing on the other claim petitions filed by the claimants who were travelling as passengers in Tempo. It is difficult, rather impossible, to lay down a general principle in these matters that would apply uniformly to all cases and all situations because no two accidents are alike and without exception an accident differs from another in magnitude and in the manner it takes place that in fixing the cause and the contributory factors, both human and otherwise, it would be totally unwise to rely upon a general principle laid down in one case for apportionment of ratio of negligence between two offending vehicles in another, involving a similar accident. The decisions cited at the Bar, therefore, are not of much help in the matter and at the most they could be of some guidance to a court which is seized of a similar matter. Having had the benefit of going through the decisions cited at the Bar and having closely examined the various factors involved in the present accident, I am of the considered view that the Tribunal is right in arriving at the conclusion that the driver of the bus is guilty of contributory negligence to the extent of 75 per cent and the driver of Tempo to the extent of 25 per cent. Even in a case where an accident results from composite negligence of two vehicles, each one contributing in equal measure to the accident, the Tribunal could fix the liability in an unequal ratio considering the size of the vehicles involved. This is permissible on the premise that the care and caution that a driver of a heavy vehicle has to display while driving his vehicle is much higher than the care and caution that a driver of a smaller vehicle is required to observe. This is so by reason of the fact that the damage that would ensue from an accident taking place as a result of rash and negligent driving of a bigger vehicle is much more than that of a smaller vehicle. I have drawn attention to this aspect of the matter only in order to show that it is not necessary that in every case of head-on collision both the drivers must be held to be negligent in equal ratio. In the case on hand the enormous damage to Tempo, the considerable distance to which it was pushed after impact and the high number of casualties should leave no doubt in any one's mind that the negligence of the driver of the bus was much greater than the negligence that could be attributed to the driver of Tempo.

9. Before parting with the case, I have to draw attention to the absence of sketch of scene of accident in the present case. Claimants who had produced the mahazar drawn at the scene of accident have not produced the sketch of scene of accident. It would be too much to assume that the police had not prepared the sketch of scene of accident in a case of this magnitude. The Tribunal which was dealing with an accident of such magnitude ought to have insisted on the production of the sketch of scene of accident by the claimants. If despite such insistence the same had not been produced by them, the court ought to have taken steps to procure the same from the police authorities. Even though the proceedings in a motor vehicle claim are summary in nature, in a case of composite negligence, it is imperative that the Claims Tribunal should take the aid of all relevant documents that may be in possession of the parties. A sketch of scene of accident would have thrown sufficient light on the point of impact, track marks of the vehicle, position of the vehicle, skid marks and brake impression which are factors necessarily to be considered for mulcting the liability to pay compensation on the rival parties. Under para 1442(3) of Chapter XXVIII of the Police Manual, preparation of the sketch of scene of accident by the police is mandatory. When preparation of such an important document is made compulsory, the Tribunal required it as it is to award compensation which might run to several lakhs, ought to have taken care to insist on the production of such important documents by the concerned party and where they are not produced, should take steps to procure them from the authorities concerned at least in all cases of serious nature. Failure in this regard by the Tribunal might lead to mulcting the liability on a wrong party because more often than not the oral evidence in these cases would be interested versions of persons who are only interested in deriving the compensation from the insured party rather than a party who may not have the cover of insurance. So, it is but natural that the claimants would try to implicate the party who has ample coverage of insurance. A perusal of the sketch of scene of accident would go a long way in assisting the Tribunal to come to a correct and definite conclusion on the aspect of negligence.

10. In the result, for the reasons stated above, the revision petitions as well as the appeals are dismissed.