

(1970) 10 KAR CK 0006
In the Karnataka High Court
Case No : Misc. First Appeal No. 77 of 1969

Cecelia Ferrao and Others

APPELLANT

Vs

The Managing Director, The Shankar Vittal Motor Co. Ltd. and
Another

RESPONDENT

Date of Decision : 15-10-1970

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 A

Citation : AIR 1971 Kar 179 : (1971) 1 MysLJ 70

Hon'ble Judges : E.S. Venkataramaiah, J;C. Honniah, J

Bench : Division Bench

Advocate : A.D. D'Sa, for the Appellant; M.P. Somasekhara Rao, S.L. Simha and M. Raja Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal from the judgment of the Motor Accidents Claims Tribunal and District Judge, South Kanara dated 31-7-1968 in Claim Case No. 5 of 1964.

2. On 19-11-1963 one Cyprian Ferrao of Mangalore was proceeding towards Panambur from Mangalore in the West Coast Road at about 7 p. m. when it was drizzling and at a place called Kottar junction, on his way, which is nearly 4 miles from Mangalore he was going in a down gradient. From the opposite direction one bus bearing No. MYX 4854 and another bus, both belonging to Shankar Vittal Motor Company, were coming at a distance. Due to collision between the bus MYX 4854 and the bicycle on which Cyprian Ferrao was going, Cyprian Ferrao was thrown down out of the bicycle as a result of which he sustained 18 injuries, most of them being abrasions. The bicycle that he was riding was slightly damaged. Cyprian Ferrao was removed to the Wenlock Hospital, Mangalore in the bus that was coming behind, where he died on the same night. The medical evidence in this case is that the death of Cyprian Ferrao was due to shock and subdural haemorrhage on account of injuries sustained by him. It could be gathered from the medical evidence that the - fatal injury was a fracture on the

base of the skull starting from the anterior part of the right middle fossa and extending on to the anterior fossa.

3. The widow of Cyprian Ferrao namely Cecilia Ferrao and her children seven in number filed an application for compensation u/s 110-A of the Motor Vehicles Act 1939 read with Rule 343 of the Mysore Motor Vehicles Rules 1963 claiming compensation of Rs. 37,857/- against the Managing Director of the Shankar Vittai Motor Company Ltd., Attavar, Mangalore and the Branch Manager of the Indian Mutual Assurance Society Ltd., Mangalore, which was the insurer of the vehicle, before the Motor Accidents Claims Tribunal and the District Judge, South Kanara. The Tribunal, after recording evidence on both the sides, by its order dated 29-9-1965, came to the conclusion that the accident was not due to negligence and rashness on the part of the driver of the vehicle in question.

The present appellants filed M. F. A. 132/66 before this Court. This court set aside the other order made by the Tribunal and remanded the case with a direction that the case should be reheard afresh after recording such evidence as may be adduced by the parties. After it was remanded, the Tribunal, which was presided by another Judge, recorded further evidence and after considering the evidence came to the same conclusion and passed the judgment under appeal. Aggrieved by this decision, the appellants have filed this appeal.

4. There is no dispute in this case that Cyprian Ferrao died on 29-11-1963 in the Wenlock Hospital, Mangalore, on account of the injuries sustained by him due to the collision that took place between the bicycle that he was riding and the vehicle bearing No. MYX 4854 driven by Hammabba R. W. 2. Two questions that arise for decision in this appeal are whether the death of Cyprian Ferrao was due to the rash and negligent act of R. W. 2 Hammabba and if that question is answered in the affirmative, what compensation is payable to the appellants.

5. On behalf of the appellants number of witnesses have been examined to prove that it was due to the rash and negligent act of R. W. 2 that the collision took place as a result of which Cyprian Ferrao died and that the appellants are entitled to compensation as claimed by them in the petition. Before going to the question as to what is the amount of compensation that the appellants are entitled to get, it is necessary to decide the first question namely, whether the incident was due to the rash and negligent act of R. W. 2, who, at the relevant point of time, was the driver of the motor vehicle, which belonged to the Shankar Vittal Motor Company Ltd., Mangalore. The witnesses that speak to the actual incident are P. W. 3 Albert Lobo, P. W. 4 Gopal V. Anchan and P. W. 5 Henry Lima.

6-8. After considering their evidence, the Court proceeded.

9. The evidence of these Witnesses, if carefully examined, shows that what all they observed was that there was a collision between the cycle ridden by Cyprian Ferrao and the vehicle driven by R. W. 2. It is difficult to make out from the evidence of these witnesses that R. W. 2 drove the bus rashly and negligently; nor is it possible to hold that he came to the extreme right and dashed against

the cycle ridden by Cyprian Ferrao. It could be stated that their evidence shows that the bus was stopped by R. W. 2 immediately after the impact within 3 or 4 feet.

Taking into consideration the gradient in which Cyprian Ferrao was going on the cycle while it was drizzling and taking into consideration that the bus was coming from the opposite direction for which it was an upgradient, it is impossible to hold that R. W. 2 drove the vehicle rashly and negligently. This is exactly what has been spoken to by R. W. 2 and also R. "W. 3, an independent witness, who was travelling in that bus, seated in front.

The evidence of these two witnesses: is that before the collision, they saw a car and a lorry coming from the opposite direction in front of which Cyprian Ferrao was riding the cycle at great speed in a zigzag manner and therefore R. W. 2 slowed down the vehicle almost to a dead stop moving the vehicle towards his extreme left when Cyprian Ferrao came and dashed against the front portion of the bumper and fell down on the road as a result of which the wheels of the cycle were twisted and Cyprian Ferrao sustained injuries resulting in Ms death subsequently. The version given by R. Ws. 2 and 3 appears to us to be more probable than the version given by the witnesses on behalf of the appellants.

As a general rule, in a case of this nature, the claimants must establish that there was negligence and rashness on the part of the driver of the vehicle and establish connection with the injury sustained by the person, involved. If the claimants fail to prove either of them their action must fail. The mere proof of some injuries is not enough. An instance may be stated when a man is found run over a Railway line, the question arises what is there to show that the train ran over him rather than he ran against the train. Unless the evidence positively establishes that for no fault of the injured or deceased but on account of the rash and negligent act of the driver of the vehicle, who uses the highway, the vehicle runs over him, it may, in certain circumstances, be presumed that he drove the vehicle rashly and negligently. The evidence must, therefore, be more consistent with the driver's negligence than otherwise. On a careful examination of the evidence we are of the view that the tribunal was justified in holding that there was neither negligence or rashness on the part of R. W. 2 while driving the vehicle at the relevant point of time.

10. For the reasons stated above, we see no reason to Interfere with the judgment of the Tribunal with the result this appeal fails and the same is dismissed. No costs.