

(1997) 12 KAR CK 0027

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2234 of 1988

C.N. Krishna Murthy

APPELLANT

Vs

P. Shashidhara Murthy and Others

RESPONDENT

Date of Decision : 05-12-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 92 A, 92 A (1), 92 C

Citation : (1999) ACJ 601 : (1998) ILR (Kar) 2391 : (1998) 4 KarLJ 376

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri R. Gopal, for the Appellant; Sri Noel Gonsalves for R.C. Castelino and Sri H.G. Ramesh, for the Respondent

Judgement

1. Heard the learned Counsel for the appellant Sri R. Gopal and Sri H.G. Ramesh, learned Counsel for respondent 4.
2. This appeal arises from the judgment and award dated 20-6-1988 whereby the Tribunal has rejected the claim petition made by the present appellant on the ground that the claimant has failed to prove that the accident causing injury to him was the result of negligence on the part of the driver of the lorry bearing No. PYX 1956 (Tanker). According to the facts of the case, it had been pleaded before the Tribunal by the claimant that on 11-6-1983 at about 8.30 a.m., petitioner was going from Bhadravathi side to Shimoga side on motor cycle bearing No. MES 9604 and when he was passing near Hudco Colony in Nidige village, one lorry bearing No. PYX 1956 came from the hind side of the petitioner in a rash and negligent manner and hit against the motor cycle from the back side. The claimant-petitioner sustained some injuries to his head and so made a claim for compensation to the tune of Rs. 1,25,000/-.
3. On notice being issued, the respondents appeared and filed written statement denying their liability and alleged that the accident on that day occurred not because of the lorry in question dashing against hind side of the motor cycle of the petitioner, but the motor cycle skidded when the petitioner wanted to take a

right turn after overtaking the lorry. The lorry was insured with the United India Insurance Company Limited. The Insurance Company contended that the vehicle was not insured with them. The petitioner impleaded the Oriental Fire and General Insurance Company limited as 4th respondent and the policy produced indicate that it was insured with the Oriental Fire and General Insurance Company Limited and the risk cover was from 21-12-1983 to 20-12-1984. It has been brought to my notice during the course of arguments the insurance policy was filed by the United India Insurance Company Limited also which exhibited that the vehicle was insured with the United India Insurance Company Limited-respondent 3 on the date of accident. The Tribunal on the basis of the pleadings, framed the following issues.--

(1)Whether the petitioner proves that the accident in question is the result of the negligence on the part of the driver of the vehicle in question?

(2)What compensation, if any, the petitioner is entitled to?

4. The Tribunal considered the pleadings and evidence of the parties and has come to the conclusion that the petitioner failed to establish before the Court that the accident occurred in the manner stated to by him namely that it was due to the actionable rashness on the part of the lorry driver and on this basis, dismissed the claim.

5. Feeling aggrieved from the award, the claimant has come up in appeal. It has been contended before me that this finding is erroneous in law. When the attention of the learned Counsel was invited to the version of the accident as put by the claimant in the claim petition that on 11-6-1983 at about 8.30 a.m. the petitioner was going from Bhadravathi side to Shimoga side on his motor cycle bearing registration No. MES 9604 belonging to his employer Indian Bank, Shimoga on B.H. Road and when he was passing near Hudco colony near Nidige village, Shimoga, one lorry bearing registration No, PYX 1956 (tanker) belonging to 1st respondent and driven by 2nd respondent Abdul Basheer and insured with 3rd respondent came behind the petitioner's vehicle in a rash and negligent manner and hit the petitioner's vehicle from backside, appellant's Counsel contended that really when the accident occurred the lorry was coming from the front side of the petitioner's vehicle and the witness has given in evidence, the Tribunal should have relied on the evidence that the driver of the lorry was negligent and the Trial Court has erred in not giving due weight to the evidence of P.Ws. 1 and 2. In my opinion, the contention of the learned Counsel is without substance. The case of the claimant had been that the lorry had been coming from behind the petitioner's vehicle at the stage of evidence to which reference has been made by the appellant's Counsel. Then the claimant became vigilant and tried to change case by stating that the lorry had been coming from front. It is one of the tight principles of law that the claim case has to be decided on the basis of the pleadings of the parties. Pleadings have to be examined and tried and to be found whether they are true. It is also one of the tight principles of law that it is the burden on the claimant to prove his case. The claim that negligence

was totally of the driver of the truck had not been established. The findings cannot be recorded on the basis of any evidence tendered by and/or in conflict with the pleadings unless pleadings have been amended. The copy of the First Information Report nor Panchanama drawn has been produced which could have been indicated the situation. It is the own fault of the appellant in not prosecuting the case. In this view of the matter, in my opinion, the Tribunal has rightly held that the claimant failed to prove and establish that the accident occurred on account of the actionable rashness on the part of the lorry driver. Learned Counsel for the appellant further contended that atleast the Tribunal should have awarded compensation under no fault liability. Section 92-A of the Motor Vehicles Act, 1939 deals with no fault liability. It reads as under:-

"Section 92-A.--(1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this Section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement".

Section 92-C defines the expression "permanent disablement" for the purpose of Chapter VII-A. It reads as under.--

"For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of Section 92-A if such person has suffered by reason of the accident any injury or injuries involving--

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head or face".

A reading of Section 92-C per se reveals that injury or injuries involving either of the elements as mentioned in Section 92-C may be described as causing permanent disablement. It means that such specific type of injuries causing effect as per Section 92-C which can be termed as causing permanent disablement. If the person has not suffered injuries causing permanent disablement mentioned in Section 92-A read with Section 92-C, he may not be awarded any compensation under the doctrine of "no fault liability" under the head of "permanent disablement". In the present case, it is not a case of death. It is a case only of injury. The injuries caused to the petitioner is described in the wound certificate-Ex. P-3. According to the wound certificate, the petitioner had suffered cerebral contusion only and no other injury. The cerebral contusion is not an injury which results in permanent disfigurement of the head or the face nor it results in permanent privation of the sight of either eye or the hearing of either ear or privation of any member of joint nor has it been proved that it resulted in permanent impairing of the powers of any member or joint. The Doctor has also not stated that the injury will cause permanent disablement.

6. In this view of the matter, in my opinion, the claimant cannot and could not be awarded compensation u/s 92-A of the Act. The appeal is without force and is hereby dismissed.