

(2010) 06 KAR CK 0058

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8493 of 2005

Divisional Controller KSRTC Kolar Division

APPELLANT

Vs

Chikkamuniyamma and Chikkannachari

RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) 06 KAR CK 0058

Hon'ble Judges : Ravi Malimath, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : Prabha Murthy, for the Appellant; N. Gopala Krishna, for R1, for the Respondent

Judgement

K. Bhakthavatsala, J.—The appellant-State Road Transport Corporation is before this Court challenging the judgment and award dated 2.5.2005 made in MVC No. 294/1999 on the file of the Civil Judge (Senior Division) and Motor Accident Claims Tribunal at Kolar.

2. The brief facts leading to the filing of the appeal may be stated as under:

The respondent No. 1/claimant on 9.6.1999 was going on a motor cycle bearing No. KA04-E-6673 driven by her son Venkatesh along with her daughter-in-law and two kids. At about 10.30 AM when the motor cycle was coming near Visweswaraiah Circle at Industrial Area. KSRTC bus bearing No. KA28-F-194 overtook a lorry and came on the wrong side of the road and dashed against the motor cycle as a result of which respondent No. 1/claimant, namely the mother of the rider of the motor cycle fell down and sustained grievous injuries. She was admitted to the hospital for treatment. Chowdamma the wife of the rider of the motor cycle lodged a complaint with Malur police. The police registered a case for the offences under Sections 279 and 337 of IPC. charge sheet was filed in CC No. 340/1999 against the driver of the KSRTC bus. The claimant got her examined as PW1, PW2 is the medical officer. In rebuttal the driver of the KSRTC bus was examined as RW1. The driver of KSRTC Bus was acquitted in the criminal case

and copy of the judgment dated 3.3.2000 made in CC No. 340/1999 was got marked as Ex.R1. The Tribunal after hearing arguments and perusing the material placed on record came to a conclusion that the accident occurred solely due to the rash and negligent driving of the bus by its driver and answered point No. 1 in favour of the claimant. The Tribunal has awarded global compensation of Rs. 3,40,000/- with interest at 6% p.a.. The appellant/Transport Corporation is before this Court challenging the impugned judgment and award.

3. The appellant has raised the following grounds;

(i) The Tribunal erred in holding that the accident occurred solely due to the rash and negligent driving of the bus by its driver.

(ii) The Tribunal erred in not taking into consideration evidence of the driver (RW1) and judgment regarding an order of acquittal in favour of the driver.

(iii) The Tribunal erred in not fixing contributory negligence on the part of the rider of the motor cycle as he was carrying four persons on his scooter as pillion riders in violation of provisions of the Motor Vehicles Act and Rules.

(iv) The Tribunal erred in awarding compensation of Rs. 3,40,000/- though the claimant had sought for compensation of Rs. 3,00,000/-.

(v) The Tribunal erred in fixing the income of the claimant at Rs. 2,100/- per month in the absence of any cogent and satisfactory evidence.

(vi) The Tribunal erred in awarding Rs. 24,251/- towards medical expenses and a sum of Rs. 13,349/- towards attendant food and nourishment expenses.

(vii) The Tribunal erred in not noticing that the rider of the motor cycle was not examined to establish that the accident occurred solely due to the rash and negligent driving of the bus by its driver.

4. Learned Counsel for respondent No. 1/claimant submits that no doubt at the time of the accident, the rider of the motor cycle was taking four other persons, namely his wife, mother and two kids. But, the accident occurred solely due to the rash and negligent driving of the bus by its driver. He submits the driver of the bus overtook a lorry and came and dashed against the motor cycle and therefore there is no contributory negligence on the part of the rider of the motor cycle.

5. We have perused the records of the Tribunal.

6. The driver of the bus has been examined as RW1 and the copy of the judgment dated 3.3.2000 made in CC No. 340/1999 on the file of JMFC at Malur has been marked as Ex.R1. A case was booked against the driver of the bus for the rash and negligent driving. In that case the prosecution examined in all six witnesses, namely, the complainant (wife of the rider of the motor cycle) and rider of the motor cycle. No other independent witness was examined on the point of negligence on the part of the driver of the bus. PWs 3 to 5 are mahazar

witnesses. PW6 is the medical officer. In the cross-examination of PWs 1 and 2, they have admitted that there were shops by the side of the road where the accident occurred; No independent eye witness was examined. Hence, the learned Magistrate rejected the evidence of PWs 1 and 2 as interested witnesses. It is mentioned in Ex.P4-motor vehicles inspector report that KA04 E 6673 (motor cycle) was not produced for inspection. The Motor Vehicle Inspector examined and reported that there was no damage to the bus. In the absence of evidence of the rider of the motor cycle and at the time of accident, the rider of the motor cycle was carrying 4 other persons on the vehicle, though the motor cycle had seating capacity of 2, it cannot be said that the driver of the bus was solely responsible for the accident. The Tribunal should have fixed the contributory negligence to the extent of 50% on the part of the rider of the motor cycle. Therefore, the finding recorded on issue No. 1 in the affirmative by the Tribunal calls for interference.

7. In so far as the quantum of compensation is concerned, the Tribunal has fixed income of the claimant at Rs. 2,100/- per month and awarded a sum of Rs. 3,02,400/- towards loss of future earning. In addition to that a sum of Rs. 24,251/- and Rs. 13,349/- towards medical expenses and towards attendant special diet and conveyance expenses. Thus, the Tribunal has awarded compensation of Rs. 3,40,000/-.

8. It is the cast of the claimant that she was aged 45 years working as a coolie and earning Rs. 2,100/- per month. The claimant has not produced her age proof. In Ex.P5 accident register extract, the age of the claimant is mentioned as 50 years. Keeping in view, she was a coolie and wage structure during the year 1999, the income of the claimant fixed at Rs. 2,100/- per month is reasonable. According to the medical reports on record, the claimant has suffered fracture of upper 1/3rd of left tibia and fracture of pelvis namely-inferior pubic rami. PW2-the medical officer has deposed that there was shortening of 2 cm in tibia the range of movement of knee was restricted with implants at the site of fracture. He has determined disablement at 75% of the left lower limb and with reference to the whole body at 40%. However, the Tribunal came to the conclusion that as she cannot walk and work as a coolie, fixed disablement at 100%. The Tribunal has applied multiplier 12 and awarded a compensation of Rs. 3,02,400/- towards loss of future earning. Merely because the claimant had come to the Tribunal with walking aid, the Presiding Officer of the Tribunal has presumed that the claimant cannot walk and work and erred in holding that there is permanent disablement to the extent of 100%. PW2 has deposed that she has got 75% disablement to the left lower limb. Hence, we fix permanent disablement at 25% for the whole body. Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, multiplier 13 could be applied for age group of 40 to 50 years. Taking into consideration the nature of injuries sustained, the claimant required at least 4 months time for treatment and rest. Hence, she is entitled for loss of earning for the period of 4 months. The x-ray reports reveals that implants are still existed. Therefore, the claimant will have to undergo surgery for removal of

implants. The Tribunal has not awarded compensation towards pain and suffering, medical expenses and loss of amenities, etc.

9. We award compensation in favour of the claimant as under:

Pain and suffering Rs. 60,000/- Medical expenses (past and future) Rs. 35,000/-
Attendant special diet and nourishment Rs. 10,000/- Loss of earning during
treatment & rest Rs. 8,400/- (Rs. 2,100/- x 4) Loss of future earning (Rs.
2,100/- x 12 x 13 x 25%) Rs. 81,900/- Loss of amenities Rs. 50,000/-
----- Total Rs. 2,45,300/- -----

10. Since the petition was filed only against the owner of the bus the claimant is entitled to remaining 50% of the compensation. In other words, the Transport Corporation is liable to pay only a sum of Rs. 1,22,650/- (i.e. 50% of Rs. 2,45,300/-) Thus, the impugned judgment and award call for interference.

11. In the result, the appeal is partly allowed and the impugned judgment and award are modified holding that respondent No. 1/claimant is entitled for compensation of Rs. 1,22,650/- with costs and interest at the rate of 6% p.a. as against the Transport Corporation.

12. The registry is directed to refund statutory amount of Rs. 25,000/- deposited in this appeal to the appellant. Since the appellant has already deposited a sum of Rs. 2,30,000/- in MVC No. 294/1999 on the file of the Additional MACT at Kolar out of paid Rs. 75,000/- and remaining amount of Rs. 1,55,000/- has been kept in fixed deposit in a bank for a period of 5 years, the Tribunal is directed to calculate the amount to which the claimant is entitled as per the modified award and refund excess amount if any.

The parties are directed to bear their own costs in this appeal.

Registry is directed to return the records along with the modified award forthwith to the Tribunal.