

(2001) 02 KAR CK 0033

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 4843 and 4844 of 1996

G. Raju

APPELLANT

Vs

Smt. Basamma and Others

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Citation : (2001) 4 KCCR 2245

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : M. Sivappa, for the Appellant; M.V. Hiremath, for Respondents 1, 2 in Miscellaneous First Appeal No. 4844 of 1996 and for Respondents 1, 3 in Miscellaneous First Appeal No. 4843 of 1996, K.T. Gurudeva Prasad, for Respondent 3 in Miscellaneous First Appeal No. 4844 of 1996 and for Respondent 4 in Miscellaneous First Appeal No. 4843 of 1996, H.G. Ramesh, for Respondent 4 in Miscellaneous First Appeal No. 4844 of 1996 and for Respondent 5 in Miscellaneous First Appeal No. 4843 of 1996 and C.M. Monnappa, for Respondent 5 in Miscellaneous First Appeal No. 4844 of 1996 and for Respondent 6 in Miscellaneous First Appeal No. 4843 of 1996, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Vallinayagam, J.—In both the appeals preferred by the owner challenging the liability of the insurance company as well as the negligence that has fastened on the driver as well, two points are raised: (1) Whether the finding of negligence in respect of the other two connected cases can be construed as res judicata so as to bind the owner in the third case? (2) Whether the liability of the insurance company can be fastened on them in the light of the dictum of the Supreme Court in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, .

2. The accident in question is not in dispute and the quantum of compensation is also not in dispute in both the appeals.

3. So far as the first point is concerned, it is seen from the cause title of the

award of the Tribunal itself that there were three cases in MVC Nos. 244 of 1989, 245 of 1989 and 732 of 1989, preferred by various claimants who had injured in the accident in question and all the three cases G. Raju, the appellant in both the cases, was made as third Respondent. The issue raised in both the Tribunal is as follows:

Whether the accident on 19.12.1988 involving truck No. MYN 4489 and Luxury bus No. MYT 6489 resulting in the death of deceased and injury to the Petitioner is attributable to actionable negligence on the part of either of the drivers or both of them in the course of their employment under Respondents 1 and 3 respectively?

4. The finding rendered by the Tribunal is as follows:

Therefore, for the reasons stated above, I hold that the accident has taken place due to the fault of drivers of both the vehicles and their negligence for causing the accident is at the ratio of 50:50 and further that the two deceased died and the injured Petitioner sustained injuries in the accident.

5. This finding so far as in MVC 732 of 1989 has become final as admittedly no appeal has been preferred challenging that finding by the owner in the light of the decisions in T. Veerendra Pal Vs. The KSRTC, and Master Ravi v. Karnataka State Road Transport Corporation ILR 1999 Kar 1644 and the Supreme Court in Ram Prakash v. Smt. Charan Kaur AIR 1997 SCW 1828, the finding having been allowed to become final, it cannot be gone into since the same as finality, the appellant having not filed any appeal against the other cases, it amounts to res judicata so far as the appellants are concerned. Thus, the first point is answered against the appellant.

6. So far as the second point is concerned, Mr. Sivappa appearing for the appellant submitted relying upon the Division Bench decision which is followed by a single Judge of this Court in United Insurance Co. Limited, Hubli v. Sangavva @ Mahadevi and Ors. reported in 2000 (1) KarLJ 298, the liability of the insurance company cannot be avoided. According to him, the Full Bench has made it clear that the passenger who accompanied the goods in a goods vehicle is certainly entitled to have protection under the insurance company if they were to involve in the accident virtue of the vehicle meeting with an accident and I am obliged to differ from the view as the learned single Judge has not followed the Supreme Court decision in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, .

7. This view cannot be sustained in the light of the clarification made by the Supreme Court in paragraph 10 of the aforesaid judgment. para 10 reads as follows:

The High Courts have expressed divergent views on the question whether a passenger can be said to have been carried for hire or reward when he travels in goods vehicle either on payment of fare or along with his goods. It is not

necessary to refer to those decisions which were cited at the Bar as we find that all the relevant aspects were not taken into consideration while expressing one view or the other.

8. The possession is made clear in paragraph 22 in the following terms:

Thus, to find out whether an insurer would be liable to indemnify an owner of a goods vehicle in a case of the present nature, the mere fact that the passenger was carried for hire or reward would not be enough; it shall have to be found out as to whether he was the owner of the goods, or an employee of such an owner, and then whether there were more than six persons in all, in the goods vehicle and whether the goods vehicle was being habitually used to carry passengers. The position would thus become very uncertain and would vary from case to case. Production of such result would not be conducive to the advancement of the object sought to be achieved by requiring a compulsory insurance policy.

9. In the light of the conclusion and categoric view expressed by the Supreme Court, I do not think that the view of the learned Single Judge deviating from the Supreme Court view is acceptable.

10. In this view following the decision of the Supreme Court, the second point also is held against the appellant.

11. In this view, both the appeals are dismissed.