

(1978) 08 KAR CK 0011

In the Karnataka High Court

Case No : Misc. First Appeal No's. 63 and 67 of 1977 and 608 of 1978 with cross-objections in M.F.A No. 67 of 1977

Gangaram and Another

APPELLANT

Vs

Kamalabai and Others

RESPONDENT

Date of Decision : 22-08-1978

Acts Referred:

Citation : (1979) ACJ 393 : AIR 1979 Kar 106

Hon'ble Judges : K. Bhimiah, J;G.N. Sabhahit, J

Bench : Division Bench

Judgement

Sabhahit, J.—These three appeals and cross-objections arise out of the same accident, that occurred on 9-9-1973 at about 8-30 A. M. On the Chikodi Mudalgi Road near Bhandiwad cross. The original respondent-2 Babasab was driving the taxi, according to the claimants, in as rash and negligent manner, as a result of which, the front right tyre burst and the taxi left the road went on its off-side and turned somersault, as a result of which the two passengers in the taxi namely, Patil and Shinde died on the spot. M.V.C. No. 49/1973 was instituted by the widow and minor children of Patil claiming compensation of Rs. 70,000 from the respondents. The widow and minor sons of Shinde instituted M.V.C. No. 50/1973 claiming compensation of Rs. 60,000 from the respondents. The respondents are the same in both cases, respondent-1 is the owner of the car and respondent-2 is the driver. The respondents contested the claim. According to them, the accident was inevitable. The tyres were new. The front right wheel tyre burst, as a result of which, the driver lost his control over the vehicle. The vehicle turned somersault. Hence, they contended that they were not liable to pay compensation. The petitioners in the two cases examined themselves to prove the petition averments. As against that, the driver of the taxi, the original respondent-2 was examined as D.W. 1. The Tribunal appreciating the evidence on record, held that the accident was the result of rash and negligent driving of the taxi, and in that view, it awarded compensation of Rs. 5,000 in M.V.C. No. 49/1973 and Rs. 3, 500 in M.V.C. No. 50/1973 by its Judgment and Award dated

16th November, 1976. Aggrieved by the said judgment and award, the respondents have instituted M.F. As. Nos. 63 and 67 of 1977. The claimants in M.V.C. No 50/1973 have filed cross-objections and the claimants in M.V.C. No. 49/1973 have instituted M.F.A No. 608/1978 claiming higher compensation. Since all these arise out of the same accident and arise out of the common judgment, these cases were clubbed together and arguments were heard.

2. The learned Advocate appearing for the appellants in M.V. As. Nos. 63 and 67 of 1977 vehemently contended that the Tribunal was not justified in holding that the accident was the result of rash and negligent driving of the car. He submitted that there was a sudden tyre burst, though the tyre was new, and as such, the driver was helpless in the matter. He submitted that it should be taken as an inevitable accident. He also submitted that the quantum of compensation awarded in the two cases were high. As against that, the counsel appearing for the claimants in two cases while supporting the reasoning of the Tribunal and its finding that the accident was the result of actionable negligence on the part of the driver of the taxi, further submitted that the quantum of compensation awarded in the two cases was very low. We were taken through the evidence and the Judgment and Award of the Tribunal. The points, therefore, that arise for our consideration in these appeals and cross-objections are:-

(1) Whether the Tribunal was justified in holding that the accident was the result of rash and negligent driving of the car in question ? and

(2) Whether the quantum of compensation awarded in the two cases is just and proper ?

3. The driver of the taxi is examined as D.W. 1 According to him, when he was proceeding on the road, he heard the sound "Dhab" from the right side tyre, then he could not control the vehicle because there was a burst of the front right wheel tyre. He has further stated that as a result of the tyre burst, the car tilted down and turned turtle. The two passengers died. He has further deposed that the tyres had been purchased about one month prior to the accident and he had run about 2,000 miles. In the cross-examination, it is elicited from him as follows:

"I do not know where the respondent-1 had purchased new tyres. The new tyres had been got fixed to the car in the Mirji's pump at Chikodi. The owner of that pump is alive, and he is a rich man. Respondent No.1 is alive. Respondent No. 1 may be in possession of the receipts for having purchased the new tyres. It is not true to suggest that the tyres were not new and that they had been worn out."

4. The law on the point is settled. When the car which was admittedly in the control of the driver, the original respondent-2 left the road, went on its off-side and toppled. Without more, the doctrine of *res ipsa loquitur* (the thing speaks for itself) is attracted. Though normally, the burden to prove actionable negligence is on the petitioners in cases like these, the same shifts on the respondents. The

respondents should explain why the case misbehaved in that fashion. In the instant case, though the driver states that the tyre was new, there is no evidence produced before the Tribunal in that behalf. It really the tyre purchased a month prior to the date of occurrence, and if the receipts were with the owner, nothing was easier for the owner than to produce the receipts and examine the person who sold the tyres. That is not done in this case. Normally, a new tyre does not trust.

5. The learned counsel, however, invited our attention to the panchanama which is got marked by consent as Exhibit P-3. It is no doubt true that in the panchanama it is mentioned that the front right tyre was a new one, without giving any basis for that opinion; it is manifest that that is the opinion of the panchas. It is nobody's case that the panchas were experts in the line and the Indian Evidence Act makes admissible the opinion of only experts. Therefore, the opinion of a layman without giving any basis that the tyre was a new one cannot be relied upon. Hence, the driver and the owner have failed to discharge the onus placed on them to establish that they had taken all care and precaution to keep the tyre roadworthy.

6. In the case of Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, his Lordship Subba Rao, J., (as he then was) who delivered the judgment has an occasion to consider the case of tyre burst. His Lordship at para 5 of the judgment has quoted with approval the observations made by Asquith, L. J., in *Barkway v. South Wales Transport* (1948) 2 All ER 460 and stated that observation clearly summarises the principles applicable as to onus of proof in the following short propositions:

" (i) If the defendants' omnibus leaves the road and falls down an embankment, and this without more is proved, then *res ipsa loquitur*, there is a presumption that the event is caused by negligence on the part of the defendants, and the plaintiff succeeds unless the defendants can rebut this presumption. (i) It is no rebuttal for the defendants to show, again without more, that the immediate cause of the omnibus leaving the road is a tyre-burst, since a tyre-burst per se is a neutral event consistent, and equally consistent, with negligence or due diligence on the part of the defendants. When balance has been tilted one way, you cannot redress it by adding an equal weight to each scale. The depressed scale will remain down. This is the effect of the decision in *Laurie v. Raglan Building Co.* (1942) 1 KB 152 where not a tyre-burst but a skid was involved. (iii) To displace the presumption the defendants must go further and prove (or it must emerge from the evidence as a whole) either (a) that the burst itself was due to a specific cause which does not connote negligence on their part but points to its absence as more probable, or (b) if they can point to no such specific cause, that they used all reasonable care in and about the management of their tyres."

7. In the instant case, as pointed out above, though the driver made out that the tyre was a new one, by way of saying that they had taken due diligence, the

same not proved as a matter of fact. Moreover, the panchanama Exhibit P-3 shows that there was a burst in the tyre to the extent of nearly 9 inches. This must have occurred because of the high speed of the car and the tyre being old striking against a stone, which according to the evidence, was lying on the road.

8. The high-speed of the car is made evident by the fact that the car has left drag marks nearly 80 feet on the katcha road and then it toppled. In the circumstances, we are constrained to observe that the respondents have not discharged the onus shifted on to them and the Tribunal was perfectly justified in holding that the accident was the result of rash and negligent driving of the car.

9. That leads us to the consideration of quantum of compensation in the above cases. We shall first take up for consideration M.F.A. No. 63/1977 which arises out of M.V.C. No. 49/1973. Patil who died in this case was aged about 39 years, according to P.W. 1, his widow. He was looking after the agriculture and on that day he was going in the car along with his father-in-law Shinde to purchase the bullocks. The Tribunal has not taken into consideration the loss of dependency to the family, as a result of the death of Patil. Even taking, on a minimum estimate, that he was by way of rendering his services to the family, contributing six rupees a day he could, after deducting the personal expenses, contribute Rs. 3 per day to the family, which means, Rs. 90 per month and Rs. 1,080 per year. In view of the fact that he was only 39 years at the time of the accident, we are inclined to multiply it at 12. So multiplying we get the loss of dependency of Rs. 12,960, the same may be round off to Rs. 12,000. In addition, the compensation has to be granted for loss of expectation of future happy life of the deceased and a conventional figure of Rs. 5,000 is awarded under this head. Together, therefore, the claimants are entitled to Rs. 17,000 by way of damages instead of Rs. 5,000 awarded by the Tribunal.

10. Adverting now to the appeal M. F. A. No. 67/1977 arising out of M.V.C. No. 50/1973, it is in evidence that the deceased Shinde was aged about 61 years at the time of the accident. On a normal expectation, he could have lived up to 65 years. Therefore, the loss of dependency was for 4 years. Taking the same earnings as in the other case and fixing the loss of dependency at Rs. 1,080 annually for 4 years, we get Rs. 4,320 as loss of dependency. If Rs. 320 is deducted towards the lump sum grant and uncertainties of life, we get Rs. 4,000 towards the loss of dependency. To this has to be added a conventional figure of Rs. 5,000 for loss of expectation of future happy life of the deceased. Together, therefore, the claimants are entitled to Rs. 9,000 as compensation.

11. In the result, therefore, the two appeals namely, M. F. As. Nos. 63 and 67/1977 are dismissed as devoid of merits. The cross-objections in M.F.A. No. 67/1977 as also M.F.A No. 608/1978 are partly allowed. The compensation is enhanced to Rs. 17,000 in M.V.C. No. 49/ 1973. The respondents in that M. V. C. Are directed to pay the same along with interest at 6 per cent per annum from the date of petition till payment as also the costs of the claimants before the Tribunal. The amounts already paid, if any, shall be taken into consideration while

making the payments.

12. Similarly, the cross-objections in M.F.A. No. 67/1977 are partly allowed. The compensation is enhanced to Rupees 9,000 and the respondents in M.V.C. No. 50/1973 are directed to pay the same along with interest at 6 per cent per annum from the date of petition till payment as also the costs of the claimants before the Tribunal. The amounts already paid, if any, shall be taken into consideration while making the payments.

13. Order accordingly.