

(1976) 07 KAR CK 0022
In the Karnataka High Court
Case No : M.F.A. No. 601 of 1974

General Manager, Bangalore Transport Service

APPELLANT

Vs

V.N. Narasimhiah and Others

RESPONDENT

Date of Decision : 20-07-1976

Acts Referred:

Motor Vehicles Act, 1988 — Section 110 D

Citation : (1976) ACJ 379

Hon'ble Judges : Nesargi, J; Honniah, J

Bench : Division Bench

Advocate : C.M. Desai, for the Appellant; V. Narasimhiah and V. Balanatham, for the Respondent

Final Decision : Dismissed

Judgement

Honniah, J.—This appeal u/s 110-D of the Motor Vehicles Act is from the award of the Motor Accidents Claims Tribunal, Bangalore, in M.C. (MVC) No. 30 of 1972 whereby a sum of Rs. 12,500/- has been awarded as compensation to Respondents 1 and 2. The owner of the vehicle has filed this appeal.

2. On 7th June, 1971 at about 10-30 a.m. near the LIC Building (opposite to Unity Building) in Bangalore, a young boy named N. Raju aged about 20 years who was riding a bicycle and proceeding from South to North, met his death in consequence of serious injuries to his abdomen on account of collision between the cycle and the bus bearing Registration No. MYF 433 belonging to the Appellant driven by its servant Respondent-4. P.W. 11 Dr. M. Srinivasan, Lecturer, in Forensic Medicine, Bangalore Medical College, who conducted the post-mortem examination observed in the post-mortem report that among other injuries, 6th, 7th and 8th ribs were fractured and the liver and spleen were ruptured. His opinion was that Raju died as a result of the injuries to the abdomen.

3. The parents of Raju and others claiming to be the legal representatives of Raju, made a claim before the Motor Accidents Claims Tribunal, Bangalore, for

Rs. 30,000. It was stated in the application that Raju met his death in consequence of the collision between the cycle he was riding and the bus belonging to the Appellant driven by Respondent-4. They stated that the collision was due to the negligence of the driver of the bus. They have also stated that Raju was earning Rs. 500 per month. The Appellant contended that the accident was not due to the negligence of the driver of the bus and that the accident was due to the negligence of the deceased himself as the deceased who was going on his cycle ahead of the bus along with two other cyclists suddenly lost control of the cycle due to collision between his cycle and another and he fell on his right and by then the bus came there and Raju hit the bumper portion of the bus.

4. The Tribunal found that the accident was due to the negligence of the driver of the bus. Having held thus, taking into consideration¹ the earnings of the deceased Raju, it held that the dependents of Raju were entitled to get Rs. 12,500 and made the Corporation to pay the amount.

5. In this appeal it is contended by Mr. C. M. Desai, learned Counsel for the Appellant, that the Tribunal was wrong in accepting the evidence of P. Ws 5, 6, 7, 10 and 13. According to him, the bus after the collision stopped within about 2 or 3 feet indicating that it must have been going at a very slow speed and in all probability as stated by the driver of the bus in his evidence the accident was due to the negligence on the part of Raju. We do not agree with this contention, because the evidence of P. Ws 5, 6, 7, 10 and 13 who were at the spot point out that the bus came from the Southern side at a great speed, and at that time Raju was going on his cycle ahead at a distance of 8 feet from the extreme left side of the road and then the bus dashed against the hind wheel of the cycle on which Raju was riding as a result of which Raju fell down and then the bus was about to pass over him and at that point of time the bus was stopped and he took the bus back. There is nothing to disbelieve the evidence of these witnesses. If Raju was going on cycle in front of the bus, it was the duty of the driver of the bus to have taken care to avoid collision with the cycle. As between a cyclist and a driver of a bus, undoubtedly, the latter's responsibility to use care and diligence is greater. The duty to use care increases proportionately with the danger involved in dealing with a particular type of vehicle. If it is found that the negligent act or omission of a driver was the proximate and efficient cause of an accident, it will not be a valid defence to say that the person injured was also negligent unless it is shown that the person injured had made it extremely difficult for the other to avoid the accident. In this case the evidence of the witness referred to above clearly establishes that Raju was riding the cycle along when the bus came from behind him and dashed against the cycle. The evidence of the driver of the bus, if scrutinized carefully, clearly goes to show that he did not see at all how the accident happened. It is only after he heard the sound he stopped the bus. Therefore, his story that it was due to the negligence of Raju the accident happened cannot be believed. A person driving a motor vehicle on a busy road like the one in question must drive the vehicle with reasonable care strictly observing the traffic regulations and the rules of the road so as not to

imperil the safety of other persons whether they are pedestrians or cyclists or others who have a similar right to use the highway on which he drives it. In view of the evidence of a number of witnesses that were present at the time of the accident, it is established clearly that the accident was due to the negligence of the driver of the bus. That finding by the Tribunal, in our opinion, is based upon proper appreciation of evidence and calls for no interference.

6. Mr. Desai, however, contended that the Tribunal having awarded Rs. 7,500 on account of pecuniary loss, was wrong in further awarding a sum of Rs. 5,000 on account of loss of expectation of life. This point is covered by the decision in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, . In that case, Rs. 25,200 had been awarded under the head "loss of benefit" and Rs. 5,000 had been awarded toward "loss to the estate". Dealing with this question, the Supreme Court said that the figure of Rs. 5,000 represented the damages for the mental agony, suffering and loss of expectation of life and there was no duplication in awarding damages under both the heads.

7. In the result, this appeal fails and is dismissed with costs. Advocate's fee Rs. 100.