

(1980) 11 KAR CK 0025
In the Karnataka High Court
Case No : M.F.A. No. 498 of 1976

Gurusiddappa

APPELLANT

Vs

Bijapur Co-operative Spinning Mills and Others

RESPONDENT

Date of Decision : 14-11-1980

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1981) ACJ 470

Hon'ble Judges : Vithal Rao, J;G.N. Sabhahit, J

Bench : Division Bench

Advocate : Ravindra L. Patil, for S. Vijay Shankar, for the Appellant; A.B. Patil and B.V. Acharya, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Sabhahit, J.—This appeal by the claimant is directed against the judgment and award dated 29.11.75, passed by the Motor Accidents Claims Tribunal, Bijapur, in Misc. No. 65 of 1974, on its file dismissing the claim of the injured Petitioner for compensation.

2. On 20.7.74 the Petitioner Gurusiddappa Chanabasappa Balaganpur had come to Bijapur. He went to Bijapur Cooperative Spinning Mills along with his friend Mr. Katti, who had work there. According to him, the Chairman of the Mill, Respondent No. 1 in the petition, told them that their car was going to Raichur via Talikoti and if they wanted to go to Talikoti they could as well go by the car. They were asked to wait at the Old Congress Office for the car to pick them. Accordingly, when they were waiting at about 2-30 p.m. near the place, the car bearing registration No. M YJ 2390 came there and gave them a lift. The driver began to drive the vehicle recklessly fast though the Petitioner-claimant requested him to go slow. When it was nearing Bagewadi the car hit a tree on the left side of the road and thus met with an accident. As a result of the accident, the Petitioner sustained fracture of his right fore arm. He has further averred that the 1st Respondent is the owner of the car, 2nd Respondent is the

insurance company and the 3rd Respondent is the driver of the car. On these averments he claimed compensation of Rs. 37,550 from the Respondents.

3. The 1st Respondent, the owner of the car, totally denied having permitted the Petitioner to travel in the car, authorising the driver to give lift to the Petitioner. That way, the owner denied the liability. The driver pleaded that he was not negligent but that the accident was inevitable since the front right side tyre burst. The insurance company in its written statement supported the owner and further pleaded that the insurer is not liable to pay any compensation for the injuries suffered by a passenger in the car. Alternatively, they asserted that the compensation claimed was exorbitant.

4. The Tribunal raised the following issues, as arising from the pleadings:

(1) Does the Petitioner prove that he sustained injuries in the motor car accident on 20.7.74 as alleged by him?

(2) Does he further prove that the accident occurred as a result of negligence on the part of the driver ?

(3) What is the amount of compensation to which he is entitled, if any, and who is liable to pay the compensation ?

(4) What order?

5. During hearing, the claimant examined himself as P.W. 1 and got marked Exts. P. 1 to P. 33. As against that, the Respondents examined two witnesses. R.W. 1 is the driver and R.W. 2 is the Chairman of the Bijapur Co-operative Spinning Mills, they are Respondents 3 and 1 respectively. The Tribunal, appreciating the evidence on record held that the accident was not the result of rash and negligent driving of the car by its driver. It further held that the Petitioner was not traveling in the car with the permission of the owner and in that view the Tribunal dismissed the petition.

6. Aggrieved by the said judgment and award, the claimant-Petitioner has come up in appeal before this Court.

7. The learned Advocate appearing for the claimant-Appellant vehemently contended that the Tribunal was not justified in coming to the conclusion that the accident was not the result of rash and negligent driving of the car by its driver. He further submitted that the Tribunal ought to have held that the claimant was traveling in the car with the permission of the owner and as such the owner was liable to pay the compensation along with the driver.

8. As against that the learned Advocate appearing for the owner argued supporting the judgment and award of the Tribunal. So did the learned Counsel for the insurer.

9. The points, therefore, that arise for our consideration are:

(1) Whether the Tribunal was justified in holding that the accident was not the

result of rash and negligent driving of the car by its driver ?

(2) If not, what is the compensation to which the claimant-Appellant is entitled and from whom ?

10. The Tribunal has entirely failed to notice that the facts of this case attract the doctrine of *res ipsa loquitur* (the thing speaks for itself). When the car went off the road and hit against a road side tree, it is obvious that there was rashness and negligence on the part of the driver in driving the car. Normally, the car is expected to go on its proper side of the road and not to go off the road and hit a tree when it is under the control of the driver. When the car behaves in that fashion, it is said *res ipsa loquitur* and that itself is *prima facie* proof of negligence presumably on the part of the driver.

11. Though, normally in a motor accident case when compensation is claimed, the burden is on the claimant to prove that the car was driven in a rash and negligent manner resulting in the accident, where doctrine of *res ipsa loquitur* is attracted the burden shifts on to the driver, and the owner. It is the duty of the owner and driver to show that the car was properly maintained and due diligence was exercised. In the instant case, the facts would not show that the accident was the result of bursting of the tyre, as rightly pointed out by the learned Advocate for the Appellant. If the front right side tyre burst, the car should have pulled towards right. Actually, however, the car has gone on its left side and hit the tree and as rightly pointed out by the learned Advocate for the Appellant, the tyre must have burst after hitting forcibly against the tree. In view of the circumstantial evidence, we are persuaded to agree with the learned Advocate for the Appellant that on the facts of the case the bursting of the tyre is the result of powerful impact against the tree because of the speed of the car and that the bursting of the tyre is not the cause for the accident.

12. That takes us to the question of quantum of compensation. The claimant has deposed before the Tribunal thus:

I was treated by Sri S.F. Patil. I was in that hospital for 3 days till 23rd. The Doctor advised me to go to Sholapur as it was a complicated comminuted fracture. I went to Sholapur on 24th. My hand was operated on 24th. The fracture was joined with the help of a steel rod. I stayed as an indoor patient in N.M. Wadia Hospital. My hand was put in plaster. I was under treatment till November, 1974. I traveled thrice from Talikote to Sholapur.

Speaking about his disability, he has stated:

I cannot properly bend my hand. I cannot eat with my right hand. It cannot be bent. I cannot turn out any work with my right hand. I cannot lift. I am advised by the Doctor that this deformity is incurable and likely to last for my whole life.

13. In the cross-examination there is no challenge to this asseveration of the claimant. Hence, compensation has to be awarded not only for the injury, viz., comminuted fracture of the forearm, but also for pain and suffering, loss of

amenities, and disablement left over resulting in reduced capacity in earning. The claimant has claimed, Rs. 37,550. Having regard to the injuries incurred and the disability left over and profession of the claimant, we deem it just and proper to award him Rs. 13,000 towards general damages.

14. The claimant has deposed that he spent Rs. 4,000 for treatment. It is no doubt true that he must have exaggerated. Having regard to the fact that he was in Sholapur in the hospital for several months, we deem it just and proper to award him Rs. 2,000 towards expenses. Together, therefore, we hold that claimant is entitled to compensation of Rs. 15,000.

15. The next question that arises for our consideration is, who are liable to pay the compensation ?

It is the case of the owner of the car, viz., the 1st Respondent, the Chairman of Bijapur Co-operative Spinning Mills, that he had not permitted the Petitioner to travel in the car and that he was an unauthorised passenger in the car and as such the owner of the car would not be vicariously liable to pay the compensation.

In this connection, learned Advocate appearing for the Appellant invited our attention to a decision of the Supreme Court in the case of Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, wherein in para 8 of the judgment their Lordships have observed:

It is now firmly established that the master's liability is based on the ground that the act is done in the scope or course of his employment or authority. The position was stated by Lord Justice Denning in *Young v. Edward Box and Co. Ltd.* (1951) 1 T.L.R. 789. The Plaintiff and fellow workmen were given a lift on one of the Defendant's lorries with the consent of his foreman and of the driver of the lorry. On a Sunday evening the Plaintiff, in the course of that journey was injured by the negligence of the driver of the lorry and the Plaintiff brought an action against the Defendants claiming damages for his injuries. The defence was that the Plaintiff, when on the lorry, was a trespasser. The traffic manager of the Defendants pleaded that he had never given instructions to the foreman that he should arrange for lifts being given to the Plaintiff and his fellow workmen on Sundays and that the foreman had no authority to consent to the Plaintiff's riding on the lorry. While two learned Judges held that the right to give the Plaintiff leave to ride on the lorry was within the ostensible authority of the foreman, and that the Plaintiff was entitled to rely on that authority and in that respect was a licensee, Lord Denning held that although the Plaintiff, when on the lorry, was a trespasser so far as the Defendants were concerned, the driver was acting in the course of his employment in giving the Plaintiff a lift and that was sufficient to make the Defendants liable and that he did not base his judgment on the consent of the foreman.

(Emphasis added)

The Supreme Court further held at the end of the para thus:

Applying the test laid down, there can be no difficulty in concluding that the right to give leave to Purshottam to ride in the car was within the ostensible authority of the Manager of the company who was driving the car and that the Manager was acting in the course of his employment in giving leave to Purshottam. Under both the tests the Respondents would be liable.

(Italics ours.)

Thus, by necessary implication, the Supreme Court has approved the test laid down by Lord Denning in *Youns v. Edward Box and Co. Ltd.* (1951) 1 T.L.R. 789.

16. Applying the test, the learned Advocate submitted that in the instant case, the driver was acting in the course of his employment under the owner while giving the claimant a lift and as laid down by Lord Denning, that was sufficient to make the owner liable vicariously.

17. Alternatively, he further submitted that in the instant case, the clerk who was traveling in the car on behalf of the Mill had ostensible authority, as in the case before the Supreme Court, to permit the claimant to travel in the car. It is significant that the Respondents have chosen not to put the clerk in the box. He has discreetly desisted from entering the box. Hence, we are satisfied that the clerk who was traveling on behalf of the Mill in the car had the ostensible authority to permit the claimant to travel in the car, and he permitted the petitioner-claimant to travel in the car thus making the owner liable. It is very significant to note that the driver in his evidence has stated that the clerk asked him to drive, which means the clerk was in-charge and control of the car on behalf of the Mill. Hence, we are satisfied that the owner, viz., Bijapur Co-operative Spinning Mills, is also vicariously liable to pay the compensation to the injured.

18. The next point that arises for our consideration is, whether the insurance company is liable ?

Obviously, Section 95 of the Motor Vehicles Act, would not require a passenger in a car to be insured compulsorily. It is not the case of the owner that special premium was paid and passenger liability was covered. Hence, obviously, the insurance company is not liable to pay the compensation.

19. In fact, the insurance company has taken a specific plea that it is not liable to pay damages for injuries caused to a passenger in a car. In spite of it, there is no whisper in the evidence of the owner that the Mill had taken any care to insure the car for passenger liability in the car also. Hence, we are persuaded to hold that the insurance company is not liable to pay the compensation.

20. In the result, the appeal is allowed, the judgment and award of the Tribunal are set aside. The claim of the Petitioner-Appellant is decreed for Rs. 15,000. The owner Respondent No. 1 of the car shall pay the same with interest at 6% per

annum from the date of petition till payment, as also the costs of the proceeding throughout.

21. The appeal as against the insurance company, Respondent No. 2, is dismissed.