

(1976) 10 KAR CK 0001
In the Karnataka High Court
Case No : M.F.A. No. 604 of 1975

Jayamma and Others

APPELLANT

Vs

General Manager, K.S.R.T.C.

RESPONDENT

Date of Decision : 19-10-1976

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 A

Citation : (1977) ACJ 322

Hon'ble Judges : A.G. Honniah, C.J.;Venkatachaliah, J

Bench : Division Bench

Advocate : D.V. Padmanabiah, for the Appellant; Siddappa, for the Respondent

Judgement

A.G. Honniah C.J.

1. This appeal arises out of a fatal accident action. One Narayanappa, a traffic constable having sustained injuries and having died at the spot as a result of a motor accident, his wife and children filed an application u/s 110A of the Motor Vehicles Act before the Motor Accidents Claims Tribunal, Bangalore, claiming compensation of Rs. 80,000. According to claimants, the motor accident which resulted in the death of Narayanappa was due to the negligence of the Respondent and of R.W.2, who was the driver of the vehicle bearing No. MYF 2002 belonging to the Respondent.

2. Respondent's defence was that R.W. 2 was driving the vehicle with all due care and caution, and the accident took place owing to reasons beyond the control of the driver, and was entirely owing to a sudden failure of the brakes of the vehicle as a result of which R.W. 2 lost control over the vehicle. Therefore, according to Respondent, it was a case of an inevitable accident and that Respondent was not liable to pay any compensation. The quantum of the compensation claimed was also disputed.

3. The Tribunal accepted the defence of the Respondent and dismissed the petition holding that the accident was an inevitable one and there was no

negligence on the part of the driver. So far as the compensation was concerned, although evidence was let in, the Tribunal did not go into that question, as on the first point, it held against the claimants. We may point out here that the Tribunal was wrong in not having recorded a finding on that question also.

4. The question for consideration in this appeal is whether the finding of the Tribunal that the accident was not due to the negligence of the driver is correct or not.

5. The facts which are not in dispute are these: The deceased Narayanappa was a Traffic Constable. After finishing his duty, he was returning home alongwith PW.I, Chikkahonnegowda, another Constable. They came near Yeswanthapur Circle and were just crossing the road. The bus of the Respondent driven by RW.2 was proceeding from Bangalore towards Tum-kur and due to a sudden failure of its brakes, instead of taking a turn to the left near the circle, went straight and dashed against the deceased. Further on, it went and dashed against a cyclist; hit an ice cream box; hit another person by name Babu; dashed against a lorry which was parked on the right side of the road and ultimately went over the pavement and hit against an electric-pole and then came to, a halt. Shortly after the accident, PW.3, Devaiah, Asst. Regional Transport Officer, came to the spot and examined the vehicle and found that the rubber hose pipe connected to the air pump and the air reservoir of the braking system had come out of its seat, since the same was fixed with the help of a cycle-tube-lining and the rubber hose had no grip to hold. On account of the said snapping of the connections the further filling of air to the reservoir was stopped which resulted in the failure of the braking system. PW.3 also noticed that the hand-brake of the bus had been removed. In a case of claim for damages on the ground that the Respondent either directly or vicariously, is guilty of a tortious act, the burden of proof that the Respondent or his servant committed the tort is upon the claimant. In the case of a motor accident it has to be shown by the claimant that the accident was due to either rashness or negligence. Such rashness or negligence need not necessarily be by the person who actually drives the vehicle at the time of the accident. However, where as here, the bus leaves its proper course and runs amuck, then *res ipsa loquitur* and there is a presumption that the event is caused by the negligence on the part of the Defendants and Plaintiff succeeds unless Defendants can successfully rebut the presumption. It is no rebuttal for the Respondent to show, without more, that the immediate cause of the bus leaving the road was a mechanical failure since such failure is *per se* a neutral circumstance equally consistent with negligence of the Respondent or due diligence on the part of the Respondent unless the Respondent goes further and shows or it emerges from the evidence-that the mechanical failure was itself due to a specific cause which excludes the negligence of Respondents as greater probability and that it had used all reasonable care and attention in the maintenance of the braking system and moving parts. The principles guiding the matter laid down by Asquith LJ. in *Barkway v. South Wales Transport* (1948) All E.R. 460 , are referred to with approval

by the Supreme Court in *The Krishna Bus Service Ltd. Vs. Smt. Mangli and Others*,

6. In the present case, the burden is not discharged by the Respondent. A person who puts on the road a mechanically propelled vehicle has an essential duty to exercise sufficient care to see that such mechanical defects as would cause damage to other users of the road are avoided. Among such mechanical defects, particularly those touching the steering system; the wheels and the braking system, the efficiency of which are of primary importance for the safety of other users of the road, demand special and constant care and check. As to whether sufficient care has been exercised in this regard is a matter within the technical knowledge of the owner of the vehicle and not of the person who has been a victim of an accident. It would, therefore, be seen that on the facts established in this case, the failure of the braking system was undoubtedly due to the faulty maintenance of the vehicle, as spoken to by PW.3 who is the Asst. RTO of the Government. There is absolutely no evidence whether the Respondent took any care much less care of the requisite standard, before putting the vehicle on the road about the fitness of the vehicle and to its road-worthiness. However, reliance is placed on the evidence of RW.1, Arunachalam, Divl. Mechanical Engineer, to show that due care and caution had been taken before the vehicle was put on the road. RW.1 received information about the accident at 11-45 a.m. and shortly thereafter he went to the spot. He stated in his evidence:

I found the hose pipes completely disconnected from the brake pipes. As a result of which the brakes had failed. And it had become out of control of the driver. The said bus was fitted with air vacuum brake. When the hose pipe is cut the entire air in the reservoir to which the hose pipe connected will be exhausted in no time. When the hose pipe is cut the brakes will become ineffective. The hose pipe due to fatigue may give way at times. The said bus was found to have been checked at Chitradurga when it left the Chitradurga on the previous day...

His evidence confirms that the connections of the air braking system had come off. He does not refer to any specific cause, though he permits himself the speculation that hose pipe may at times give way do to fatigue. He merely says that the bus was found to have been checked at Chitradurga. Evidence on Respondent's side is significantly silent as to who checked it and what the nature and quality of that inspection at Chitradurga was. The Respondent, therefore, cannot be said to have discharged the burden that the bus was checked and it was in a road-worthy condition when it was put on the road. Therefore, its defence that it is a case of inevitable accident cannot be accepted.

7. Referring to a similar defence in *Lakshmiammal and Others Vs. State of Tamil Nadu*, a Bench of Madras High Court held:

The fact of sudden failure of the brake is not by itself sufficient to hold that the accident was not due to negligence. The fact that the driver of the bus could not have anticipated such failure of the brake also does not alter the position. In all

cases of such latent defects the Defendant can get over the liability only if it is further shown that latent defect was not discoverable in spite of reasonable care.

After referring to a leading case in *Henderson v. Henry E. Jenkins & Sons* 1970 A.C.J. 198 there in it was further observed:

... It should be further shown by the Respondent that considering the age of the vehicle and other circumstances, whether reasonable care did not require the removal of the pipe carrying brake fluid at suitable intervals so that even the hidden parts of pipe could be inspected.....

On a consideration of all the facts of the present case, we disagree with the finding of the Tribunal that there was no negligence on the part of the Respondent and reversing that finding, we hold that the accident was due to the negligence of the Respondent.

8. So far as the compensation is concerned, the evidence in this case shows that the deceased Narayanappa, at the time of his death, was getting a salary of Rs. 216-40 p.m. After allowing a deduction of Rs. 56 towards his personal expenditure, it is not unreasonable to estimate his contribution to the maintenance of his family consisting of his wife and five children, at Rs. 160 p. m. Admittedly the Appellants are getting a family pension of Rs. 66 and taking into consideration that the pension goes on reducing, we deduct a sum of Rs. 60 from the value of dependency of Rs. 160. If this balance of Rs. 100 p.m. is capitalised on 10 years" purchase value, it comes to Rs. 12,000. If 20 percent is deducted from this towards uncertainties of life and in consideration of the lump-sum payment, the net amount that the Appellants would be entitled to on this account would be Rs. 9,600. The Appellants are also entitled to a sum of Rs. 5,000 as compensation for the loss of expectation of life. Appellants are therefore entitled to get Rs. 14,600 + Rs. "00 towards funeral expenses, in all Rs. 15,100.

9. Accordingly, this appeal is allowed in part and we award a compensation of Rs. 15,100 to the claimants. The claimants would also been entitled to interest on the said sum of Rs. 15,100 a 6 percent p.a. from the date of the application till date of realisation. Appellants are entitled to the costs of the appeal. Advocate"s fee Rs. 100.