

(1992) 03 BOM CK 0074
In the Bombay High Court
Case No : F.A. No. 293 of 1982

Karnataka State Road Transport Corporation

APPELLANT

Vs

Pishori Lal

RESPONDENT

Date of Decision : 20-03-1992

Acts Referred:

Citation : (1993) ACJ 778

Hon'ble Judges : P.S. Patankar, J

Bench : Single Bench

Advocate : B.P. Apte, for the Appellant; G.L. Puri, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Patankar, J.—The appellant is the owner of bus No. MYG 4272 and the respondent is the owner of the oil tanker (hereinafter called "tanker") bearing No. MHT 2242. On 1.11.1977 the bus was proceeding from Pune to Bombay and the tanker from Bombay to Pune. Near Village Kon, Taluka Banvel, District Raigad, the accident took place between these two vehicles. The tanker suffered extensive damage. Therefore, the respondent made an application before the Motor Accidents Claims Tribunal, Alibag-Raigad, claiming Rs. 40,126/- as compensation for the damage caused to the tanker.

2. The respondent alleged that the driver of the bus was rash and negligent in driving the same and was responsible for the accident. He further contended that the tanker was idle for a long time and, therefore, there was loss of earnings.

3. The appellant filed written statement and contended that the driver of the tanker was rash and negligent in driving it. It was denied that the driver of the bus was rash and/or negligent in driving the bus. It was further contended that damage or compensation claimed was excessive.

4. The learned Member of the Claims Tribunal held that driver of bus was rash and negligent in driving the bus and has caused the accident. The learned Judge

further held that the respondent suffered loss due to the accident to the extent of Rs. 34,626/- and of Rs. 5,000/- as the tanker was idle. Therefore, the learned Judge granted total compensation of Rs. 39,500/- with interest at the rate of 6 per cent per annum to the respondent.

5. The appellant in this appeal has raised two points for my consideration:

(i) The learned advocate contended that the driver of the tanker was rash and negligent in driving it and was responsible for the accident, and

(ii) He further contended that the court below has granted excessive compensation to the respondent and the respondent has failed to prove the same.

6. I have gone through the entire evidence on record. On behalf of the respondent, the respondent entered the witness-box at Exh. 26 and deposed that he served the notice on the appellant on 5.11.1977 at Exh. 28 claiming damages. The appellant replied by Exh. 29 dated 8.11.1977. Again the respondent sent notice dated 25.4.1978 at Exh. 31 claiming damages and alleging negligence of the bus driver. There was no reply by the appellant. He has further deposed that accident occurred because of the negligence of bus driver. I find that there is practically no cross-examination on this aspect. Similarly, respondent examined the tanker driver by name Kashiram Budhiram Yadav at Exh. 38. He has stated that he was driving the vehicle on the correct side of the road at the speed of 30 to 35 km. The bus came from wrong side and hit his vehicle on the front. The bus had travelled 10 to 12 feet on the wrong side. There was also brake mark to the extent of 10 to 12 metres. He has also stated in the cross-examination that he applied brakes and slowed down his vehicle. The suggestion put to him in cross-examination was that he was at high speed as he was trying to overtake one truck and, therefore, it went to the wrong side and hit the bus. But that was denied. He also denied that the bus was stationary. His evidence further shows that he was not prosecuted for the accident. His evidence, therefore, shows that the tanker was on correct side. It was not going at high speed while the bus was on wrong side and was driven at excessive speed. On behalf of the appellant, the driver of the bus by name Kupayya Rama, at Exh. 39, was examined. He has stated that he saw the tanker near culvert. It was at high speed and he applied the brakes and halted the vehicle. The tanker was trying to overtake the truck and at that time it dashed against the bus lifting it towards the right side. He has admitted that he was prosecuted for the accident, but was acquitted. In the cross-examination he has admitted that there were markings of road dividers. Further in the cross-examination he has admitted that panchanama was drawn and the bus was found on the wrong lane. He then added that he had gone to see the bus in the evening and found it partly on the wrong lane and the tanker was on the correct side, though he has further stated that the tanker was moved aside on the correct side presumably by the tanker driver. But I find that this case was not put to the driver of the tanker in the cross-examination. Further his deposition can be accepted as the

panchanama at Exh. 27 does not mention of culvert. It is also not possible to accept that tanker dashed against the bus and lifted it towards right. When panchanama at Exh. 27 scrutinized, it would show that both the vehicles were in front of each other. In view of this it is also not possible to accept his version that the tanker was moved aside on the correct side later on. Therefore, his admission remains that the bus was on the wrong side and he was prosecuted for the accident, while there was no prosecution of tanker driver. This would show that prima facie bus driver was negligent, though he might have been acquitted for various reasons.

7. The panchanama Exh. 27 first records the situation of the bus. It shows that the cleaner side of the bus was damaged. The bus and the tanker were standing opposite each other. The back side wheel of the bus from the driver side was nearly 2 mtrs. beyond the centre of the road and the front side wheel of the driver side was completely beyond the centre of the road. Further there were brake marks of 12 mtrs. Situation of the tanker is noted as follows:

The front wheel from the driver side was 2.70 mtrs. inside the centre of the road and back side wheel from driver side was inside by .83 mtrs. The front wheel from the cleaner side was 55 cms. away from kacha road and back side wheel from cleaner side was 38 cms. from kacha road. All this goes to show that the bus was on the wrong side and the tanker was on the right side. Therefore, considering the preponderance of probabilities, the driver of the bus was rash and negligent in driving it, and the conclusion drawn by the court below in that respect is correct.

8. The learned advocate for the appellant then submitted that the grant of damages was excessive. For proving the damage to the vehicle, the respondent has examined himself and deposed about the loss. He has stated that chassis and front show of the vehicle and the cabin were extensively damaged. The panchanama at Exh. 27 supports his case. Panchanama shows that there was damage to the machine, cabin front side and gear box. The respondent also examined at Exh. 32 the owner of the garage, who has repaired the said tanker. He has produced invoice at Exh. 33 giving the details regarding the repairs earned out. There is also receipt produced at Exh. 34 showing that he had received total amount of Rs. 32,827/-. He has further deposed that New Star Welding Works run by one Ahamad is in the premises of the garage, who carried out welding work. The amount paid to the said Ahamad was Rs. 1,799/-. The only suggestion made to the said witness was that his bill was inflated. However, the evidence of the said witness at Exh. 32, the invoice and receipt produced on record and the panchanama recording extensive damage caused to the tanker, there is no reason to believe that the claim made by the respondent was excessive in that respect.

9. The learned advocate further submitted that there is no document produced on record to show that vehicle was really idle for nearly 2 months or that the respondent was earning Rs. 100/- per day and that he was using the vehicle for

25 days per month. He also invited my attention to the claim application in which the respondent has stated that he was earning Rs. 100/- per day and vehicle was idle for 2 months while in the deposition the respondent has deposed that he was earning Rs. 200/- per day as income and the vehicle was idle for 4 - 4 1/2 months. In my opinion, the court below has taken very reasonable view considering the extensive repairs which were required to be made to the vehicle. It was reasonable to expect that it would require about 2 months. Further the respondent has not only stated in the application that he was plying the vehicle for 25 days in a month but he has also deposed about it in his evidence and there is no cross-examination on this. Therefore, it can safely be taken that he had lost income for about 50 days because the tanker was idle due to heavy repairs. I further find that the court below has accepted earning at the rate of Rs. 100/- per day as claimed in the application. The appellant in the written statement has not specifically denied about it, except stating that the claim made by the respondent was excessive. Further in the cross-examination of the respondent, a suggestion was put that in the application the respondent has claimed income of Rs. 100/-per day. In my opinion, by this it was indirectly suggested that the income was not Rs. 200/- as stated in the examination-in-chief but was only Rs. 100/- per day. Further Rs. 100/- was quite reasonable income of an oil tanker. Therefore, the court below was correct in granting compensation of Rs. 5,000/- on this count.

10. Hence, I dismiss this appeal. However, as the learned advocate for the respondent is absent, there shall be no order as to costs.