

(1999) 11 KAR CK 0035

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2873 of 1997

Karnataka State Road Transport Corporation

APPELLANT

Vs

Smt. Laxmibai

RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Citation : (2000) 4 KarLJ 276

Hon'ble Judges : H.N. Narayan, J

Bench : Single Bench

Advocate : Sri. D. Vijayakumar, for the Appellant; Sri Suresh M. Lathur, for the Respondent

Judgement

1. This appeal is by the owner of the vehicle Karnataka State Road Transport Corporation, directed against the award passed by the Civil Judge and Motor Accident Claims Tribunal, Bailahongal, allowing the petition in part, granting the compensation of Rs. 53,500/- with interest at the rate of 9% per annum. The respondent herein filed the claim petition before the MACT, Belgaum, which was transferred to MACT, Bailahongal alleging that on 26-2-1989 at about 9 p.m. the claimant was travelling in the KSRTC bus bearing Registration No. CAF 3590 on Belwadi Nayanagar Road, near Ningadalli Village, as a result of rash and negligent driving of the said bus by the driver, the window glass was broken resulting in the injury to the claimants eye. She was given first-aid in Lingadahalli, and she was admitted to Belgaum Civil Hospital on the next day for treatment of injury. She suffered vision in her right eye. The appellant herein resisted the claim on the ground that no such accident had occurred and the bus did not ply on that road, on that day and that the bus was parked at Belgaum KSRTC Bus Stand at 9 p.m. on the date of accident. Therefore he disputed the claim.

2. In proof of their respective contentions the claimant and her son are examined as P.W. 1 and 2 and they relied upon the evidence of an independent witness P.W. 3 and Doctors P.W. 4 and 5 and got marked certain documents on their

behalf and closed their case. On the other hand, the driver and Depot Manager of the appellant-KSRTC were examined as R.W. 1 and R.W. 2. They got marked certain documents.

3. In proof of the fact that the Depot in question was set fire by a gang of students and all the records of the said Depot were destroyed. The learned Member of the Tribunal upon careful scrutiny opined that the injury sustained by the claimant was due to a negligent driving of the KSRTC bus in question and that she is entitled for compensation.

4. Aggrieved by the said order the respondents have questioned the award.

5. Sri D. Vijayakumar, learned Counsel for the appellant contended that the Tribunal is not right in discarding the evidence of R.W. 1 and R.W. 2 by accepting the evidence of the claimant and interested witnesses P.W. 3 and P.W. 4, that the motor accident has occurred as alleged involving the vehicle in question and that there is nothing on record to show that the bus was plying on the road on the said day and that the claimant has really sustained injuries on her eye as alleged. It is contended that the claimant is a old lady of 70 years and her case is only to get some compensation.

6. The learned Counsel for the respondent however, justified the award passed by the Tribunal.

7. I have considered these contentions and perused the evidence. The short question that arises for consideration is whether the motor accident had occurred at all as alleged and whether the award passed by the Tribunal is sustainable in law?

8. It is undisputed that the injured lady and her son are illiterate and rustics. The documentary evidence in proof of the said motor accident, if any, is found in the case sheet at Ex. P. 4 maintained by the Belgaum Civil Hospital, which is a Government Hospital. The entries made therein are not seriously disputed by the appellant. The claimant was brought to the said hospital on 27-2-1989 about 1 p.m., a day after the date of accident. The motor accident according to the claimants had occurred at about 9 p.m. on 26-2-1989. The history of the injuries as recorded by the Duty Doctor is as follows.--

"While travelling in a bus, bus door glass broken due to stone throw and glass pieces fallen in right eye two days back".

She was discharged on 13-3-1989. Ex. P. 4 does not disclose whether the bus involved is KSRTC bus or not. The number of the vehicle is also not mentioned. For the first time the number of the vehicle involved in the accident is given in the claim petition filed on 22-5-1989 after lapse of three months. It is not stated as to who furnished the information to the claimant. The claimant in her evidence has not stated the number of the bus, obviously for the reason that she is innocent and old and she must not have noticed the number of the bus. But P.W. 2 and P.W. 3, her son and another witness have given the number of the bus.

P.W. 2 is the son of P.W. 1 - claimant was aware of the registration number of the bus had not mentioned it anywhere till the filing of the claim petition. The entry made in Ex. P. 4 also shows that the accident occurred two days prior to the date of her admission to the Hospital. This raises genuine doubt as to the date of occurrence of the accident.

9. It is true that in a summarily civil proceedings, claimant is not expected to prove her case like in any other Civil Original proceedings. But when the accident itself is question by the respondents as to the involvement of their bus in question, the claimant is required to prima facie show before the Court that the bus involved was a KSRTC bus and that the bus in which she was travelling and she sustained injuries while travelling in the said bus.

10. It is undisputed that no accident in the real sense has occurred in this particular case. It is her case that she sustained injury to her right eye while she was travelling in the said bus and the glass pieces of window pane entered her right eye, when the bus was plying on a road and when bus was negotiating pit and therefore the question of lodging a criminal complaint does not arise. It is not the law that in every case of this type, there must be necessarily be an oral complaint to prove the motor accident. As stated above, there is no motor accident as such in this case, but it is a case where a passenger is alleged to have sustained an injury as a result of a negligence of the driver. Even in the absence of negligence, the injured claimant is still entitled to claim compensation from the owner of the vehicle, if an injury is caused to a passenger, whether on account of negligence or otherwise. It is the duty of the bus owner to take the passenger safely to the destination. But the question whether the claimant was travelling in the said bus and the bus was plying in the said road is not necessarily proved by the claimant. It is submitted by the learned Counsel for the appellant that all the records of the said depot are destroyed in fire mischief, and therefore evidence let in by the claimant itself gives doubt to the nature of the alleged accident at all.

11. Therefore, it becomes highly doubtful as to the occurrence at all as pleaded by the claimants. The learned Member of the Tribunal is no doubt accepted the evidence of the P.W 1 to P.W. 3 in proving the accident, but the statement made on oath after long time after the accident is not sufficient to accept the version. There must be some acceptable evidence in proof of the accident. Therefore, in my view the claimant has failed to prove the accident itself by placing acceptable and cogent evidence. Even prima facie the evidence is not placed before the Court to accept the accident.

12. In the light of these facts, it is difficult to accept the finding of the Tribunal. In this view of the matter, the petition filed by the claimant fails and is liable to be dismissed on that ground alone. Insofar as the quantum determined by the Tribunal is concerned, I do not find any infirmity with it, in view of the finding on the question of occurrence, that the appellant has to succeed. The appeal is accordingly allowed. Award passed by the Tribunal is set aside. The petition filed

by the claimant is dismissed. Amount in deposit is directed to be returned to the appellant.