

(2002) 10 KAR CK 0026

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1640 of 1997

M. Shivamurthy

APPELLANT

Vs

Mallaiah and Others

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Citation : (2003) ACJ 1199 : (2002) 6 KarLJ 462 : (2003) 1 KCCR 75

Hon'ble Judges : D.V. Shylendra Kumar, J;A.M. Farooq, J

Bench : Division Bench

Advocate : K. Vyshali, for M. Papanna, for the Appellant; M. Shivaprasad, High Court Government Pleader for Respondent 2 and 3, for the Respondent

Final Decision : Partly Allowed

Judgement

D.V. Shylendra Kumar, J.—This is an appeal by the claimant who had suffered extensive injuries in a motor accident involving a Government vehicle and whose claim petition before the Tribunal has been dismissed in limine on the premise that the claimant-appellant was not able to identify or establish the vehicle involved in the accident or link up the vehicle belonging to the respondent as the vehicle involved in the accident.

2. The aggrieved claimant is in appeal before us. The brief facts leading to the above appeal are that the claimant was a pillion rider on a motor-cycle bearing Registration No. MEB 7279 owned and ridden by his friend one Krishnappa and were travelling on the said motor-cycle on the 20th May, 1991 from their village to Kollegal and while they were at Sathyagala on the Kollegal-Bangalore road, a jeep bearing Registration No. CAG 403 which was driven in a rash and negligent manner, came, and dashed against the motor-cycle as a result of which impact, the claimant and the other person on the motor-cycle suffered injuries. The claim petition is only by the present claimant, who, it appears, had suffered serious injuries namely, fracture of the right leg and other bruises and injuries.

3. The injured was shifted to the hospital at Kollegal by his friend Krishnappa by

taking him in a bus. The treatment and facilities being inadequate, was in turn shifted to J.S.S. Hospital at Mysore, where he was in-patient for about forty-five days.

4. The claim petition inter alia stated that the jeep which had hit and caused the accident, did not care to stop, but sped away leaving the injured persons to fend for themselves.

5. A complaint was registered at the Police Outpost of Sathyagala Forest Check-post in respect of this incident at about 1.45 A.M. on 21-5-1991 and a First Information Report was received about the same at the Police Station at Kollegal. The driver of the jeep by name Mallaiah was impleaded as the first respondent in the claim petition, who was also charge-sheeted and prosecuted before the jurisdictional Magistrate.

6. The claimant who was still undergoing treatment at the J.S.S. Medical College, Mysore at the time of filing of the petition as on 17-7-1991, sought for compensation under various heads, in all totalling a sum of Rs. 3,95,000/-.

7. The claimant had pleaded that he was aged 42 years, and was doing the business of manufacturing jaggery and selling the same; he also had agricultural lands and that the accident had immobilised him; he had lost earning for more than six months and that the fracture had left his leg shortened for ever; he was left with a permanent disability and concomitant loss of future earning also. The claimant also sought for medical expenses at a sum of Rs. 20,000/-.

8. The claim petition was contested. The jeep which was identified to be belonging to the Excise Department in a mahazar conducted later pursuant to investigation by the police, was claimed to have not been involved in the accident at all. It was contended by the respondents that the particular jeep was not at the accident spot at that point of time, but was elsewhere and the driver also pleaded that the vehicle which he was driving was never involved in any accident. The defence was one of total ignorance of the accident, of the non-involvement of the jeep in the accident and consequently no liability on the respondents.

9. The Trial Court, in the light of such pleadings, formulated the following points for consideration.-

"1. Whether the alleged motor accident is true?

2. If so, whether the said motor accident occurred as a result of rash and negligent driving of jeep No. CAG 403 by the first respondent?

3. Whether the petitioner is entitled to any compensation? If so, how much?

4. Relief?"

10. The petitioner in support of his case examined himself and four other witnesses, one Dr. J.S. Hegde, Professor of Orthopaedics, J.S.S. Medical College,

Mysore as P.W. 2, V. Krishnappa, owner of the motorcycle which was hit by the jeep as P.W. 3, one Shivalingaiah, Forest Guard working at Sathyagala Forest Check-post as P.W. 4 and Mahadevaswamy, Forest Watcher working at Sathyagala Forest Check-post as P.W. 5. The petitioner, while supported the version in the petition which was corroborated by the motor-cycle rider Krishnappa examined as P.W. 3, the doctor who had occasion to examine the injured claimant, has deposed about the extent of damage caused to the claimant and the extent of disability he has suffered. The other two witnesses namely, the Forest Guard and Forest Watcher have spoken to about the complaint received on that day. The plaintiff also exhibited as many as 23 documents inclusive of the Accident Notice (Ex. P. 1), Medical Certificate (Ex. P. 2), copy of the FIR (Ex. P. 3), copy of charge sheet (Ex. P. 4), Spot mahazar (Ex. P. 5), Seizure mahazars (Exs. P. 6, P. 7 and P. 8) and Wound Certificate (Ex. P. 9) issued by the General Hospital, Kollegal and Ex. P. 10 wound certificate issued by the J.S.S. Hospital at Mysore and the evidence regarding his position and income through Exs. P. 11 to P. 21 and the Certificate issued by J.S.S. Hospital as per Ex. P. 22.

11. As against these, on behalf of the respondents, the driver of the jeep was examined as R.W. 1 while one M. Srinivasa Reddy, the Excise Inspector was examined as R.W. 2 and the Forest Guard, Kollegal was examined as R.W. 3. The documents exhibited on behalf of respondents 1 to 8 which included the logbook entry relating to the journey of the jeep on the relevant day as Exs. R. 1, R. 2 and R. 3(a), copy of the FIR Ex. R. 4, statement of the complainant (Ex. R. 6) and statement of Mr. Krishnappa given before the police as per Ex. R. 8.

12. While the evidence of R.W. 1-Mallaiah, the driver of the jeep, is to the effect that the jeep driven by him was not involved in the accident and that he was not aware of the accident which has been complained against him. His version was that he was not at the place as per the logbook entry which is maintained by the Department. He did admit that the jeep was moving on the very same route on the very same day the accident had taken place but they had taken a different route and had not come on the road touching Sathyagala. The time of journey more or less tallies with the time at which the accident took place and he did admit that a complaint had been registered against him in respect of this accident and that he was called to the Police Station but had not signed any papers at all for grant of bail or making any statement there, but admitted, that he has been prosecuted before the Criminal Court for rash and negligent driving.

13. The evidence of the other two witnesses does not in any way further the case of the respondents as they say they had been to the place near about the place where the accident had taken place on that day in connection with some inspections and had asked the driver to take back the jeep to Kollegal and stayed back for further investigation etc., and that the driver had taken the jeep to the Headquarters and had reported reaching Mysore around 9.30 P.M. or so. The version indicates that the jeep was very much in the area of accident and that

they had asked the jeep to be driven back and they are not aware as to what could have taken place on the return journey of the jeep. However, R.W. 2 has indicated that the driver and himself were not getting on well and it is false to say that the jeep had travelled from Kollegal towards Malavalli and from Malavalli towards Kollegal around 8.45 P.M. on that day. Otherwise they support the version of the respondent that the jeep is not involved. R.W. 3 has not said anything about the accident nor has said anything about the movement of the vehicle involved in the accident. He has only said that there is a register kept which indicates the movement of the vehicles that move through the check-post. However, no such register had been produced before the Court as admitted by this respondent in the cross-examination. But, he has said that Mahadevaswamy and Shivalingaiah were working as guards in their Department and that they were working at the check-post gate during 1991. The evidence of this witness, if at all, could only corroborate the version of the claimant and in no way supports the version of the respondents.

14. The learned Trial Judge was of the view that on the available evidence, the claimant had not proved that the vehicle involved in the accident was the jeep No. CAG 403 belonging to the Excise Department and did place reliance on coming to this conclusion on the discrepancies namely, that the complainant had described the jeep as belonging to the Police Department and further that in the statement given by the claimant as well as P.W. 3-Krishnappa, the number of the jeep had not been indicated. The Trial Court also placed considerable reliance on the entry in the logbook which according to the respondent indicated that the jeep in question could not have been at the accident spot at 9 P.M. of 20-5-1991, dismissed the claim petition itself holding that no liability can be fastened on the respondents in respect of the accident nor was the claimant entitled for any compensation.

15. We have heard the learned Counsel for the appellant and the learned Government Advocate appearing for the respondents. We have been taken through the judgment of the Tribunal and also the records of the case. It is contended on behalf of the appellant that there was considerable evidence on record to indicate the involvement of a jeep that belonged to the Government and further that the jeep, after causing the accident had not stopped at the spot and sped away. The evidence of P.Ws. 4 and 5, Forest officials as also the documentary evidence in the form of FIR copy, spot mahazar are strongly relied upon to indicate involvement of the vehicle, jeep bearing Registration No. CAG 403 in the accident.

16. The evidence on record clearly indicates that the accident has taken place on 20-5-1991 at about 9 P.M. and a jeep was involved in the same. The time of the accident being 9 P.M. and it being dark, it is quite possible that the injured persons who must have been in a daze and shock only identified the vehicle as a jeep belonging to the police and may not have read as to whether it actually belonged to the Exercise Department or Police Department. Such finer distinction

might not have registered on their mind. But, what is to be noted is whether the vehicle belongs to the Excise Department or Police Department, it is nevertheless owned by the Government and the vehicle involved in the accident being a Government vehicle, which cannot be disputed and which aspect is conclusive on the evidence on record, the liability of the Government is not absolved from compensating the victim of a road accident involving a motor vehicle belonging to the Government while in use on a public road.

17. This aspect apart, the police, after investigation, have identified the vehicle, have prosecuted the driver of the vehicle for negligent driving and this is not in dispute. One defence set up in this regard by the respondents is that there was rivalry between the Police Department and Excise Department and as such a false case has been foisted against the vehicle belonging to the Excise Department by the Police. A defence of this nature is hardly worth taking notice of. It can only show the extent of desperation the respondents are at in defending their case. We deprecate the stand of the respondents in putting forth such a defence for the purpose of avoiding liability. Such untenable and fantastic defence may be perhaps put forth by private parties, but we do not expect the same from a Department of the Government, which is expected to act in a responsible manner.

18. In any view of the matter, the evidence on record indicates involvement of the jeep to be the cause for the accident. The jeep having been identified in the course of the investigation and mahazar indicating that the jeep was located in a garage for the purpose of repair and with the kind of damage on the vehicle leaving a tell-tale story and having been so found immediately after the accident, the burden was very heavy on the respondents to explain as to under what circumstances the jeep was found in the garage and with such damage to the vehicle if it was not involved in the accident. Nothing has been said about this by the respondents.

19. In this view of the matter, we are of the clear opinion that the accident has been caused due to the rash and negligent driving of the vehicle namely, jeep bearing No. CAG 403 belonging to the respondents and the claimant was entitled to be compensated in respect of the injuries suffered by him in the accident caused by the jeep.

20. That leaves us with the question as to the quantum of compensation that is to be awarded. The Trial Court having answered the issue namely, the liability against the driver of the jeep, had not proceeded to consider the question of quantifying the compensation amount. There is no discussion at all on this point.

21. The evidence on record indicates the extent of injuries the claimant had suffered. P.W. 2-Dr. J.S. Hegde who has been examined on behalf of the claimant had deposed that on examination he had noticed the following injuries.-

"(1) A sutured wound 4" in length in the lower part of the anterior aspect of the right leg.

- (2) A pinpoint wound on the anterior aspect of the right thigh in middle one-third.
- (3) A sutured wound 4" in length on anterior aspect of lower third of the right leg".

He has also indicated the duration of treatment at the J.S.S. Hospital itself, which was more than 1 1/2 months. He has also indicated that there was shrinkage of leg by 1" in length and due to the operation of the femur and that the hip fracture had caused shortage of flexion by ten degrees. He had also indicated that the injury had left recurring pain due to the insertion of nail. X-ray after the treatment also indicated mal-union of fracture with a cavity. The doctor had deposed that as a consequence of the operation, he will not be able to squat on the ground and due to the shortening of the leg, there will be limping and he may not be able to run, he may also have difficulty while undergoing further treatment and he had assessed the valuation of disability at 50% in the limbs.

22. The evidence of the doctor itself indicates that the claimant had suffered considerable injuries of lasting nature and that he will also suffer in future and will not be a normal healthy person again.

23. Insofar as the financial capacity and loss of income is concerned, the evidence itself indicates that the claimant was carrying on business of jaggery manufacturing and selling. He was having agricultural lands and was a person of reasonably good income. Immobilisation for about six months has definitely caused loss of income and the disability is definitely likely to affect his future earning capacity also. The claimant also had incurred considerable medical expenses and had claimed a sum of Rs. 21,000/- to be reimbursed on this account. Obviously, the claimant should have incurred expenses for commuting between his place of residence and hospital at Mysore and other incidental charges in this connection.

24. However, having regard to all these aspects and having regard to the fact that the claimant is entitled to be compensated under the heads "Pain and suffering", "Loss of amenities", "Medical expenses", "Nourishment, attendant charges and conveyance charges during the period of hospitalisation or treatment" and also "loss of earning capacity" and permanent disability that he has suffered to the limbs in the accident, we consider to award a global compensation quantifying the same at Rs. 1,00,000/- and this amount will carry interest at 8% from the date of accident till deposit.

25. In the result, the appeal is allowed in part. We set aside the judgment and award of the Tribunal, allow the application in part and direct the respondents to pay a sum of Rs. 1,00,000/- with interest at 8% from the date of the accident till deposit. The vehicle belonging to the Excise Department being the one involved in the accident, it is the primary duty of the Government of Karnataka. Department of Excise to make good this amount, whether it is insured with the Karnataka Government Insurance Department or not. The award amount shall be deposited before the Tribunal within a period of eight weeks from today. On such

deposit, the Tribunal shall release 50% of the amount to the claimant and the balance 50% shall be kept invested in a fixed deposit in a nationalised bank for a period of five years. The claimant is entitled to withdraw the interest accruing on the same.