

(1983) 09 KAR CK 0015
In the Karnataka High Court

Malkamma

APPELLANT

Vs

Subhashchandra Reddy and Others

RESPONDENT

Date of Decision : 20-09-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 (1)

Citation : (1986) 59 CompCas 113

Hon'ble Judges : R.S. Mahendra, J;G.N. Sabhahit, J

Bench : Division Bench

Advocate : B.S. Raikote, for the Appellant; Shivraj Patil and D. Sheuvaraju, for the Respondent

Judgement

Sabhahit, J.—This appeal by the claimant is directed against the judgment and award passed by the Claims Tribunal, Gulbarga, passed on the 17th day of January, 1981, in Mis. MVC No. 21 of 1980 on his file, dismissing the petition on a preliminary issue, holding that the Tribunal has no jurisdiction to entertain the claim.

2. The claim petition, inter alia, avers thus: "On March 25, 1980, at about 6.30 p.m. he (Mallareddy) called the cleaner, Gulam Jilani, son of Gulam Rasool and told him to fill the diesel in the tractor bearing registration No. MYP 4659 which was standing in front of the house of the respondent NO.1 at Yelhair. The said Mallareddy also called the deceased, Basappa, came and held the Dalki through which cleaner, Gulaum Jilani, was pouring diesel in the said tractor. After pouring diesel the deceased, Basappa, and cleaner, Gulam Jilani, took aside `Lalaki" and tin respectively. At that time, abovesaid, Mallareddy was standing near the diesel tank of the tractor. As soon as the deceased, Basappa, and Gulam Jilani, took aside the Lalki and diesel tin from diesel tank of the tractor, the said Mallareddy has negligently lighted a match to see whether complete diesel tank of the tractor has been filled or not. As soon as said Mallareddy lighted a match near the mouth of the tank, diesel in the tank of the abovesaid tractor caught fire and flames came out suddenly. Same has burnt the clothes and bodies of the

deceased Basappa, and Gulam Jilani."

3. It is further averred in the petition that as a result of the injuries, Basappa died and his legal heir, viz., the widow, Malkamma, claimed compensation before the Claims Tribunal, Gulbarga, for the death of her husband due to the actionable negligence of Mallareddy, who was the manager (person in control) of the vehicle in question. The other side raised a preliminary objection before the Tribunal that the claim was not maintainable before the Motor Accidents claims Tribunal. The Tribunal treated it as a preliminary issue, framing the issue thus:

"Whether this Tribunal has competency and jurisdiction to try the case."

4. and on hearing the arguments, the Tribunal upheld the preliminary objection and declared that the Tribunal has no jurisdiction and competency to entertain the petition and try the case and that way, dismissed the said petition. Aggrieved by the said judgment, claimant has instituted the above appeal in this court.

5. Learned advocate , Sri B.S. Raikote, strenuously urged before us that the Tribunal was not justified in coming to the conclusion that the accident did not arise out of the use of the motor vehicle, as the facts averred in the petition clearly establish that the accident arose out of the use to the motor vehicle in question. He further submitted that the Tribunal was not justified in rejection I.A. 2 given for amending the petition, giving better particulars of the claim. As against that, the Learned counsel , Sri Shivaraj Patil, appearing for the contending respondents, argued supporting the judgment and order of the Tribunal . The points, therefore, that arise for our consideration in this appeal are :

(1) Whether the Tribunal was justified in holding that it had no jurisdiction to entertain the claim on the facts of the present case?

(2) Whether the Tribunal was justified in rejecting I. A. 2 given by the claimant for amending the petition giving better particulars?

6. Section 110(1) of the motor vehicles Act, 1939, speaks of constitution and jurisdiction of the Claims Tribunals. It reads:

" A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as `the Claims Tribunals') for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accident involving the death of, or bodily injury to, person arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both".

7. Thus, becomes clear that the Tribunal has jurisdiction to adjudicate upon claims for compensation in respect of the accident involving death of, or bodily injury to, person, arising out of the use of motor vehicles.

8. The simple point that arises for consideration is whether the act of filling the tank of the tractor with diesel and the accident arising in that connection, can be

considered to be an accident arising out of the use of the motor vehicles.

9. The learned counsel appearing for the appellant invited our attention to a Division Bench decision of this court in the case of *R. Sundareshan v. S. T. Kagale* ILR (1980) 1 Kar 124. The very question, viz., the interpretation of the term "arising out of use of a motor vehicle", was under consideration in that decision. Honourable Mr. Venkatachala J., speaking for the Bench, in para 10 of the judgment, has ruled thus:

"the phrase 'arising out of the use' employed in section 110(1) of the Act, in our view, should be given a wide interpretation as would advance the purpose for which section 110(1) is enacted."

10. In that connection, His Lordship has further observed earlier thus:

"the other contention of the learned counsel appearing for the owner driver and the insurer is that even if the motor vehicle parked on a public road is motor vehicle within the meaning of the definition of a motor vehicle given in the Act, the opening of a door of such motor vehicle, while it is so parked, cannot be considered as the use of motor vehicle and, as such an accident arising from opening of the door of such motor vehicle, cannot be considered to be as an accident arising out of the use of the motor vehicle, as would give rise to a claim u/s 110(1) of the Act. We do not find any substance in this contention as well. When a motor vehicle has to be put to use, we think of such motor vehicle from the point of view of its 'vehicular function.' Motor Vehicle's use, therefore, does not lie only in driving it but in doing everything connected with it and which is necessarily incidental to its use as a motor vehicle. The operation of a door of motor vehicle. When by the opening of the door of a motor vehicle an accident arises giving rise to a claim for compensation, one cannot be heard to say that the accident did not arise out of the use of the motor vehicle concerned."

11. In fact, the view taken by the Division Bench of this court finds full support in the observation made by Noble Lord in *Brown v. Roberts* (1963) 2 ALL ER 263 (QB). Therein also, wide interpretation of the term "arising out of the use of a motor vehicle" was accepted was considered to be accident arising out of the use of the motor vehicle. The term "use" was much better in connotation than the word "drive". Therefore, an accident caused by negligently opening the door of a vehicle was an accident arising out of use of a vehicle. The court, in that case, however, held that since it was the passenger who opened the door, and he had no control over the vehicle, the owner or driver was not negligent. In the instant case, the facts averred in the petition would clearly reveal that the manager, viz., Mallareddy, directed the cleaner and Basappa, his servant, to fill the tank of the tractor which is a motor vehicle. That being so, it is incidental for the use of the motor vehicle and if an accident occurs during such filling of the diesel into the tank of the tractor, that would certainly fall within the ambit of "arising out of use of the motor vehicle." Hence, we have no hesitation to hold that the accident arose out of the use of the motor vehicle on the averred facts of the present case.

12. Learned counsel for the respondents, however, invited our attention to a decision of the Madhya Pradesh High Court in the case of Manoj Kumar Mundi and Another Vs. Hari Gopal Rao Devasthale and Others, Therein also, the phrase, "arising out of use of motor vehicle" came up for consideration. The facts of that cases were: two trailers were parked on a public lane one over the other. All that was contended in that petition was the two trailers placed one over the other were parked on the side of a public lane and one of them slipped and caused the accident. It is on these facts that their Lordships held that the accident did not arise out of the use of the motor vehicle at all. That is obvious because there was no motor vehicle at all. There were only two trailers which were parked by the side of a public lane over the other. One of the slipped and caused the accident. That being so, there cannot be any quarrel with the observation of their Lordship that there is no accident arising out of the use of the motor vehicle as a mere trailer by itself cannot be considered to be a motor vehicle.

13. Learned counsel invited our attention further to a decision of the 964553--> There, the averments in the application were that on April 10, 1965, at about 4.30 P.M., one Dayaram was bringing his truck RJQ 3945 by pushing it from his house. When he came in front of the bungalow of Shri Shivlal T. Porwal, he called some boys and asked them to push the truck and in return he promised to give them a ride over the truck. As soon as the vehicle took a turn towards the Chopasni road from Porwal's bungalow on the third road, the truck began to move speedily as there was a slope. the deceased, Pravin, was one of the boys, who were pushing the truck. As the truck gained speed, some of the boys, including Pravin, got upon the chassis of the truck. Dayaram saw Pravin and others getting upon the chassis, but he neither stopped them from doing so, nor did he stop the truck and get the boys step down from the chassis, when it moved for some distance. Pravin wanted to get down from the truck. At that time, the right leg of the boy went side between the two rear wheels and the leg could not be taken out. Pravin cried, but Dayaram paid no heed to it, and with the revolving of the wheel, Pravin was dashed headlong on the road and the wheels moved over his head and body. Even then no attempt was made by Dayaram to stop the truck. the deceased, Pravin,, received certain injuries over his head, as a result of which, he died spontaneously on the spot. The parents of Pravin claimed compensation and it was in that connection that the Claims Tribunal, Jodhpur, held that the Tribunal had no jurisdiction to entertain the claim. the reason given by the Claims Tribunal is that, in para 10 of the application, the applicant stated that the vehicle which was being pushed by the boys had neither any engine nor any brake. It had no body at its back, but only a chassis being moved by the boys. Hence, the Claims Tribunal had no Jurisdiction. thus, it is obvious that what is described as a truck is a mere chassis in that case without any engine. That being so, it is obvious that the accident did not arise out of the use of a "Motor vehicle" as there was no motor vehicle at all. Hence, the two rulings cited before us by the learned counsel of for the respondent have no relevance to the facts of this case. On the other hand, as pointed out above, it is

manifest that the incident on the facts of the present case arose out of the use of the motor vehicle as allegedly the diesel tank was filled by Basappa at the instance of mallareddy, alleged manger and after the tank was filled, to verify as to whether it was filled, Mallareddy struck a match, which burst into flames causing fatal injuries to Basappa, who died subsequently as a result of injuries sustained by him. That being so, we have no hesitation to hold that the learned member of the Claims Tribunal, therefore, was entirely in error in rejecting the claims petition holding that he had no jurisdiction entertain the claim.

14. The learned member of the Claims Tribunal rejected I. A.2, seeking to give better particulars of the accident. He is obviously in error. In the course of the judgment, he has observed that since he is dismissing the petition as having no jurisdiction to entertain the claim, his order on I. A. 2 would not be of any consequence. But, now, that we have held that the claim petition is maintainable, the matter is of consequence. the order rejecting the amendment is obviously illegal. There is no reason to reject the amendment so sought. In fact, the amendment should be liberally allowed so as to do substantial justice between the parties. Hence, we set aside the order passed by the learned member of the Claims Tribunal on I. A. 2 and we allow I. A. 2.

15. In the result, the appeal is allowed. The impugned judgment and order of the member, claims Tribunal, as also his order on I. A. 2 are hereby set aside. We hold that the petition in question is entertainable by the Claims tribunal. We send back the petition with a direction to the Tribunal that is shall now register it as a regular claim petition and allow the petitioner to amend the claim petition and allow the petitioner to amend the claim petition as per I. A. 2 and then proceed in accordance with law in disposing of the claim petition expeditiously. No costs of this appeal.