

(2003) 01 KAR CK 0092

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1655 of 2001

Mallamma

APPELLANT

Vs

Balaji and Others

RESPONDENT

Date of Decision : 03-01-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304 A

Citation : (2003) 2 ACC 257 : (2004) ACJ 368 : (2003) 2 KarLJ 112 : (2003) 1 KCCR 660

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : Umesh R. Malimath, for the Appellant; H.G. Ramesh, for Respondent 3, for the Respondent

Judgement

1. Heard the learned Advocates appearing on both sides.
2. The claimants in this appeal are the mother of the deceased Bhimaraya, who is said to be a resident of Rawoor Village in Chittapur Taluk, Gulbarga District and respondent 4 is the father of the deceased. The deceased Bhimaraya was aged about 28 years and he was working as an agricultural labourer under one Ramanna S/o. Sheshappa and was getting an income of Rs. 1,500 p.m.
3. On a fateful day i.e., on 9-4-1997 in the morning the deceased was taking bullocks of his master Ramanna to plough the lands; at about 6 a.m. when he was so going near Rawoor gate on Chittapur-Shahabad road on the extreme left side, a milk van bearing Reg. No. MH-13-G 0755 came in high-speed and in a rash and negligent manner, which was driven by respondent 1 and dashed against the deceased and the bullocks. Consequently, the deceased Bhimaraya sustained fatal injuries and died on the spot and further the bullocks also sustained injuries. The appellant/claimant being the mother, filed the claim petition before the MACT, Gulbarga. After recording the evidence and hearing the arguments, learned Tribunal dismissed the claim petition on the ground that the appellant/claimant has not proved the rash and negligent act of the driver of the

lorry which was involved in the accident. Feeling aggrieved by the said order, the appellant herein has challenged the same on the ground that her son died on the spot on account of the injuries sustained in the accident occurred at about 6 a.m. on 9-4-1997 and therefore, principles of *res ipsa loquitur* are very much applicable on the facts of the present case.

4. The principal contention urged by the learned Counsel for the appellant is that the strict provisions of the Indian Evidence Act need not be applied when the respondent themselves admit the involvement of the vehicle in the accident in question and the burden of proof shifts on them and therefore, non-examination of any independent eye-witness to prove the negligence is not a factor to the case of the claimant. Further, it is submitted by the learned Counsel for the appellant that the concerned police who registered the case against the driver of the lorry investigated and filed the charge-sheet against respondent 1 for an offence punishable under Sections 279 and 30-A of the IPC and that itself is a *prima facie* case to prove the actionable negligence. Therefore, the reasons assigned by the learned Tribunal appears to be not correct. Further, it is argued that the respondents themselves have taken a contention in their respective written statements that the accident if any occurred was not due to negligence of the driver of the vehicle but it was only due to the negligence of the deceased Bhimaraya himself. This fact has to be proved by respondents by examining either the driver or any independent witnesses, since the claimant wants to discharge her burden of proof and therefore, the principles of *res ipsa loquitur* applies and the appeal is to be allowed.

5. On the other hand, learned Counsel for the respondents submitted that the appellant herein who is a claimant before the MACT is not an eye-witness to the incident and she has not examined either Ramanna, who lodged a complaint against the lorry driver or Virupaksha Gaddeger who happens to be an eye-witness has not been examined and it is for the claimant to prove the actionable negligence and therefore, he has submitted that the Tribunal has rightly dismissed the claim petition and accordingly, the appeal is liable to be dismissed in limine with costs.

6. It is an undisputed fact that late Bhimaraya died on the spot in a motor vehicle accident that occurred in the early morning of 9-4-1997 on Chittapur-Shahabad road, situated near the Rawoor Village and the respondents herein have also not disputed about the injuries caused to the bullocks and also the fact that at the time of the accident the deceased was working as a labourer under one Ramanna of Rawoor Village. Of course, in case of claim petitions, the initial burden is on the claimant to prove the manner in which the accident took place. P.W. 1 who is the appellant herein and mother of the deceased has deposed on oath before the Tribunal about the accidental death of her son in that motor vehicle accident. She has also specifically deposed before the Tribunal that her son died on account of the accident which occurred on the fatal day, that her son was going to the field of Ramanna for the purpose of ploughing and this accident

took place on account of the fault of the lorry driver but she is not an eye-witness to the incident and has not examined any other witness but has relied on the documentary evidence, Exs. P. 1 and P. 2 which are FIR and the complaint and this fact has not been seriously disputed by the respondents about the involvement of the vehicle in that accident. Ex. P. 3 is the charge-sheet filed by the PSI against one Balaji (driver) herein for an offence punishable under Sections 279 and 304A of the IPC. Ex. P. 4 is the post-mortem report and Ex. P. 5 is the certified copy of the claim petition filed in M.V.C. No. 341 of 1997 by one Nagappa and the appellant herein seeking compensation. But, the respondents herein have not stepped into the witness-box to rebut the oral evidence of P.W. 1 and documentary evidence at Exs. P. 1 to P. 3. Respondent 2 has filed the written statement denying about the fatal death of the deceased Bhimaraya due to fatal injuries caused in the motor vehicle accident. His contention is that the death of Bhimaraya was not due to rash and negligent driving of the lorry driver but of the negligence of the deceased himself. A similar contention was taken by the insurer i.e., respondent 3. But, respondent 1 who happens to be the driver of the vehicle has filed a memo adopting the written statement filed by respondent-owner. Such being the case, respondents 1 to 3 have not proved their contentions by examining either driver of the said lorry or any independent eye-witness.

7. Learned Tribunal while dismissing the claim petition has observed that in Ex. P. 2-complaint, it is written that one Virupaksha Gaddeger informed the complainant Ramanna about the rash and negligent driving of the lorry by respondent 1 and about the accidental death of late Bhimaraya and the injuries caused to bullocks. Of course, the appellant herein is a rustic village lady and she has not examined the said Virupakshappa Gaddeger who is said to have been informed. Ramanna is not a fatal to the case of the claimant. It is a well-settled law that the strict rules of the Indian Evidence Act need not be applied in a case of motor vehicle accident to prove negligence. In para 11 of the judgment the Tribunal has observed that the claimant has not proved the negligence of the driver of the vehicle. Of course, the initial burden lies on the claimant when the respondents themselves have taken a specific plea that the deceased was himself responsible for accident and his death and hence, the burden automatically shifts on them. Further, the observation made by the learned Tribunal in para 11 of the judgment to the effect that eye-witness is the only competent person to speak the exact facts of the case appears to be not proper. If the accident occurred on the highway that too in the early morning which is not proper to accept the evidence of any eye-witness because, the deceased was an agricultural labourer working in a remote village of Chittapur Taluk and his duty was to take the bullocks of his master to go to the agricultural land and to plough the same. Even in the near villages the agricultural coolies carry their belongings in the early morning to go to their respective village for agricultural work i.e., harvesting, ploughing etc. Such being the case, it is not proper to expect any eye-witness to the accident. Sometimes the eye-witness may not come forward to give evidence for the various reasons. In the instant case, appellant happens

to be a poor woman and she might not have been instructed to bring some eye-witness to speak with regard to the accident. That itself is not a good ground to disbelieve the version of the claimant/appellant. So, having regard to the date, time and place of the accident, the manner in which the deceased Bhimaraya sustained fatal injuries and died on the spot and also nature of the injuries sustained to the bullocks, which is just and proper to hold that the principles of *res ipsa loquitur* are very much applicable to the facts on hand.

8. In this connection, reference may be made to a decision in *United India Fire and General Insurance Company Limited v. Maddali Suseela and Ors.* 1979 ACJ 110 wherein the Division Bench of the Andhra Pradesh High Court has observed in para 25 as under:-

"The -maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused".

The following passage from Halsbury's Laws of England (3rd Edition) at page 77 is very inceptive:

"An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence "tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous".

In *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, referring to the doctrine of *res ipsa loquitur* the Supreme Court said at page 346 thus:

"The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence".

It is further observed thus:

"Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might probably have happened in a manner which did not connote negligence on this part".

The general principle is that he who alleges a fact must prove it. Normally it is the duty of the plaintiff who alleged negligence to prove the same.

xxxxx"

9. Therefore, keeping in mind the ratio laid down in the aforesaid two decisions, it can be held that the driver of the milk tank was mainly responsible for the accidental death of late Bhimaraya.

10. In a recent decision of the Supreme Court in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, wherein it was held that "jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action".

11. In another decision of the Supreme Court in the case of Puskpuhai Parsliottam Udeshi, supra, wherein it was held that:

"Motor Vehicles Act (1939), Section 110-A(1)(b)--Death caused due to rash and negligent driving--Compensation--Rash and negligent driving--Proof--Burden--Application of principle "res ipsa loquitur"--Requirements".

12. Therefore, under these circumstances, I am of the considered view that the Tribunal has wrongly come to the conclusion and held that the claimant has not proved the negligence on the part of the driver of the milk van involved in the accident. Filing of the charge-sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to prove the same.

13. The appellant/claimant herein and her husband had also filed M.V.C. No. 341 of 1997 against the respondents i.e., owner, driver and insurer of the vehicle and subsequently, the said claim petition is dismissed as withdrawn by an order dated 23-12-1998, which is clear from Ex. P. 5. But, in the instant case, respondent 4 is arrayed as party respondent. The evidence of P.W. 1 shows that since her husband Nagappa was not co-operating, she impleaded him as respondent 4.

14. The appellant-claimant has claimed in all Rs. 2,95,000/- under the heads: loss of dependency, funeral expenses, loss of estate, loss of love and affection, mental shock and agony. While dismissing the claim petition, the Tribunal has not answered Issue No. 7 framed and at least while dismissing the claim petition, the Tribunal ought to have assessed the entitlement of compensation by the appellant, which is also against the principles of law. According to P.W. 1 her son was getting wages of Rs. 50/- per day and in order to prove this fact, she has deposed before the Court on oath to the effect that she was entirely depending on the income of her son and so, after his death, she is facing much hardship and the contents of the complaint, Exs. P. 1 and P. 2 shows that late Bhimaraya was working under Ramanna at Rawoor and on the fatal day, he died on account

of the injuries sustained by him. Considering the fact that the deceased was earning Rs. 50/- per day as an agricultural labourer since he was unmarried, 50% of the income has to be deducted and that on account of the accident, the appellant is at loss of Rs. 25/-per day i.e., Rs. 750/- per month. According to the claimant, her son died at the age of 28 years which is also evidenced by the post-mortem report that he was aged 28 years and he died on account of shock and hemorrhage injuries. The evidence on record shows that as on the date of accident, the age of the appellant/claimant was 50 years. Hence, the annual loss of dependency would be Rs. 9,000/- per annum and if multiplier of "12" is adopted, the total loss of dependency would be Rs. 1,08,000/- (i.e., Rs. 9,000/- x "12"). Apart from this, a conventional sum of Rs. 8,000/- towards "funeral expenses and loss of estate" is awarded. Hence, the appellant in all is entitled to Rs. 1,16,000/- with interest at 8% p.a. from the date of petition till the date of payment. Respondents 2 and 3 who are owner and insurer of the lorry are jointly and severally liable to pay the said amount with costs and interest, since the lorry in question was insured with the 2nd respondent and that the policy was in force on the date of the accident i.e., 4-11-1997.

15. Accordingly, the appeal is allowed with costs. The judgment passed by the Tribunal is set aside. Respondents 2 and 3 are jointly and severally liable to pay a sum of Rs. 1,16,000/- with interest at 8% p.a. from the date of petition till the date of payment. The appellant as well as respondent 4 being the parents of the deceased Bhimaraya are entitled to receive the said sum. Respondent 3 shall deposit the amount within an outer limit of 12 weeks from the date of receipt of this order and after depositing the said amount, 50% of the award amount shall be deposited in Fixed Deposit for a period of 3 years in any Nationalised Bank and the balance amount may be paid to them.