

**(2003) 05 KAR CK 0002**  
**In the Karnataka High Court**  
**Case No : M.F.A. No's. 4560 of 2000 etc.**

Mohammed Mumtaz and Others

APPELLANT

Vs

S. Ravindranatha and Others

RESPONDENT

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**Date of Decision :** 26-05-2003

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 122

**Citation :** (2004) 3 ACC 568 : (2005) ACJ 1951 : (2004) ILR (Kar) 109 : (2004) 3 KarLJ 115 : (2003) 3 KCCR 2339

**Hon'ble Judges :** A.V. Srinivasa Reddy, J

**Bench :** Single Bench

**Advocate :** A.K. Bhat, for the Appellant; S. Srishaila, for R2 and A.V.S. Shastry, for R3, for the Respondent

**Final Decision :** Allowed

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## Judgement

Srinivasa Reddy, J.—The limited question involved in these appeals is, whether the Tribunal was right in holding that the parked van bearing Regn. No. AP-02/V-1874 was in any way responsible for the accident.

2. In the accident that took place during the intervening night of 6th and 7th December, 1977 between the tempo bearing Reg. No. KA-02/3710 and the mini lorry bearing Reg. No. AP-02/V-1874 three persons who were travelling in the goods tempo had died. When the tempo which, according to the claimants, was being driven in a rash and negligent manner was near the Doorapapeswar factory on Bangalore - Hyderabad road, it dashed against the rear side of the mini lorry which was parked on the tarred portion of the road. The parking lights of the mini lorry were not switched on at the time of the accident. The legal representatives of the deceased filed claim petitions before the Tribunal alleging that the death had occurred due to the composite negligence of both the vehicles. The Tribunal while awarding compensation in each of these petitions fixed the liability to pay compensation only on respondent No. 3, the owner of the tempo bearing Reg. No. KA-02/3710, on the ground that the parked mini

lorry was in no way responsible for the accident. The present appeals by the legal representatives of the deceased are directed only against this part of the judgment of the Tribunal. The appeals do not challenge the quantum of compensation awarded in each of these cases.

3. I have heard the learned Counsel Mr. A.K. Bhat for the claimants and Sri S. Srishaila for respondent No.2 Sri A.V.S. Shastry for respondent No.3 was not present at the hearing.

4. The Tribunal has come to the conclusion in the impugned order that the stationary mini lorry had not contributed to the accident in any way and the offending tempo alone was responsible for the accident. The Tribunal has considered this aspect of the case at paragraph 8 of the order in the following terms:

"When we see the above evidence of both the parties it clearly goes to show that the tempo was parked on the left side of the road portion and it was partly on the road and partly on the mud road. Thus, sketch Ex.P5 produced by the petitioner shows that the tar road at the place is a straight road and it is 23 feet in width and on either side there is mud road of 15 feet width. The parked vehicle No. 1874 was parked partly on the mud road and partly on tar road. The tempo No. 3710 has gone and dashed to that parked vehicle. It is seen that there is more than sufficient place on the tar portion and it was not at all an obstruction for the vehicle No. 3710 and there was no necessity for him to go and dash to that vehicle. Hence, the sketch as per Ex.P. 5 clearly goes to show that the vehicle was properly parked by the side of the road. On the other hand the vehicle in which the deceased were travelling ie. 3710 has got to the extreme left side of the road and dashed to the parked vehicle. Hence, the driver of the tempo No. 3710 is actually negligent. There was ample scope for him to avoid the accident. It is this vehicle which was moving and has gone and dashed to the lorry which was parked. Hence, I hold that the driver of the tempo bearing No. KA-02-3810 was rash and negligent in driving that tempo and the driver of the said vehicle No. AP-02-1874 was not responsible for that accident."

Before I proceed to consider whether the finding recorded by the Tribunal to the above effect is correct or not, it would be useful to refer to the provision under the Motor Vehicles, Act, 1988 that governs parking of vehicle. The legal position is that parking of vehicle should be always done in a manner so as not to cause or likely to cause danger, obstruction or undue inconvenience to other users of the road. The relevant provision in that regard is Section 122. It reads:

"Leaving vehicle in dangers position - No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers."

The Tribunal has come to the conclusion that the stationed mini lorry was in no

way responsible for the accident on finding with the help of Ex.P5 the sketch that there was sufficient space available to the travelling van to avoid the stationed vehicle. Whether there was sufficient space on the road for providing the vehicle on the move the required space for deviating from the path on which the parked vehicle was stationed is a factor directly dependent on the total width of the road. In order to pin the responsibility for the accident on the driver of the offending vehicle alone, the Court must satisfy itself that despite availability of the required space for deviation the driver had dashed against the stationed vehicle and caused the accident which led to the death of the deceased persons. The Tribunal has found in the case on hand that even after providing sufficient space for the oncoming vehicles coming from the opposite direction that the van did have enough space to steer clear off the stationed tempo given the fact that the width of the road as given in the sketch Ex.P5 is 23 feet and that, therefore, the accident had resulted entirely because of the rash and negligent driving of the van. The conclusion reached by the Tribunal is, thus, from the point of view availability of space cannot be found fault with. But accidents do not occur on account of lack of space alone, they occur for various other reasons too. The approach of the Court-below in concluding that the van driver alone was responsible for the accident based on the singular factor of availability of sufficient space for maneuvering the vehicle away from the stationed vehicle, therefore, is not correct in the facts and circumstances of the case. Such an approach assumes the fact that the stationed vehicle was quite visible for the driver of the vehicle which was on the move. This factor assumes importance in the present case because the accident took place just past mid-night. Visibility being another essential factor that should be considered by a Court while fixing the responsibility for the cause of accident is, in turn, dependent on various other factors such as the time of accident, mode of lighting of the road, the colour of the parked vehicle, the absence of the parking indicators and the background against which the vehicle is stationed. If on a close examination of Ex.P5, the sketch of spot of accident, it is seen that the visibility was for any reason obscured to such an extent that even on exercising all the due care and caution that can be expected of a diligent driver the accident could not have been avoided, it would be a travesty to hold that despite the poor visibility that the driver had to cope with, still, as he was not successful in avoiding the accident that the responsibility for the accident should be fixed on him and him alone.

5. Negligence is a question of fact and the fact can be best gauged from the account of the accident as given by the people who may have travelled in the offending vehicle and the mahazar drawn after the accident. The accident took place in the dead of the night at 12.30 a.m. Ex.P4 is the spot mahazar which was drawn in the morning of 7th December, 1997. Ex.P4 is silent about the existence of any mode of lighting at the spot or round about it. Ex.P5 also does not disclose the existence of any mode of lighting on the road. If there was any lamp post at the spot or near about it, the same would have found mention in Ex.P5. Ex.P4 mentions the colour of the parked vehicle as yellowish green. In the

absence of any lighting at the spot the background against which the tempo was parked must have been pitch dark. It is admitted position that the mini lorry was parked without the parking lights. In the pitch-darkness that must have enveloped the area in the absence of any sort of lighting. The mini lorry having an yellowish green body could have been easily obscured from the sight of a driver driving the van. Section 122 has been framed to ensure safety of the traffic. The stationing of the tempo without the parking lights in the pitch darkness amounts to leaving a vehicle in such a condition or in such a circumstance as to cause danger to the other users of the road. The dark background, the dull body colour of the mini lorry and the absence of light at the spot must have rendered it impossible for the driver of the van to have noticed to the tempo in time to avoid it. There could be no other probable reason why the van should go and dash against a stationed vehicle when there was so much space for veering away from its path. There could be no doubt that if the parking lights of the mini lorry were kept on, the driver of the van would have certainly noticed the tempo from a fairly good distance and avoided the impact. The Tribunal has completely lost sight of this important aspect of the matter when it considered the question of negligence. It is clear that the driver of the mini lorry violated the statutory provision governing the parking of vehicles by parking the vehicle without keeping the parking lights on. But this aspect alone should not result in giving a clean chit to the driver of the offending van. The van was being driven on the extreme left side of the road and the van at the time of impact was just a few feet away from the mud portion of the road. The road as could be seen from Ex.P.5 is straight and if only the driver had taken the mid-lane or had driven away from the lane reserved for slow moving vehicles the accident would have never happened. Even if no fault could be found for driving so close to the left side of the road on a National Highway as the presence of slow moving vehicles is a remote possibility, still, the fact that the impact has resulted in three deaths unerringly points to the rash and negligent driving of the van in question. If the van was being driven carefully and at a moderate speed, certainly the impact would not have been so severe resulting in the death of three persons. It becomes clear that the van was being driven at a great speed on a lane meant for slow moving vehicles when the visibility was poor. Therefore, the driver of the van was also responsible for the accident along with the driver of the stationed mini lorry who had parked his vehicle in a dangerous manner. However, I need not go into the exercise of apportioning the negligence between the drivers of the two vehicles as there is no claim from the drivers of the vehicles involved in these cases. The deceased were all traveling as passengers in the van and as they had not contributed in anyway to the accident the doctrine of composite negligence applies to these claims by the legal representatives of the deceased, I therefore, hold that the accident occurred due to the composite negligence of both the vehicles involved in the accident. The claimants are entitled to recover the amount of compensation from the owners and insurers of both the vehicles.

6. Learned Counsel Sri S. Srishaila relied upon the decision in LT. S.K. GANGULI

v. STATE OF HARYANA . 1987 ACJ 920 It was a case where a bus dashed against a stationary truck parked on the metalled portion at night time. The road was 23- 1/2 feet wide and the truck was parked partly on the kacha road but predominantly on the pacca road. The driver of the offending vehicle took the defence that he was dazzled by the headlights of an oncoming vehicle and despite his using dipper and slowing down the bus, the left portion of the bus struck against the stationed truck. The Court struck down the defence on the ground that after the dazzle of the light was over, still there were about 50 yards left for the bus to cover before it could come near the stationed truck and despite the availability of much space and time for swerving away from the parked vehicle the driver had not been vigilant and caused the accident due to his negligence. In the present case from the evidence available on record it clear that the driver could not have seen the mini lorry at all till it was too late for him to avoid the accident because the mini lorry was totally obscured from the sight of the driver of the van. In Vimala and Others Vs. Devadoss and Others, a Division Bench of High Court of Judicature at Madras reversed the finding of composite negligence recorded by the Tribunal in a case of a bus hitting a stationary truck parked on the left side kacha portion of a straight road in the darkness of night resulting in the death of a passenger in the bus. The defence of the driver of the bus was that due to glare of headlights of the vehicles coming from the opposite direction he could not see the road ahead of him. The defence was turned down by the Court on the ground that he should have slowed down or stopped his vehicle when the road was not visible to him due to glare of headlights. In the said case the accident had taken place at 4 a.m. It was a case in which the driver of the bus had admitted in his evidence that he could see the lorry at a distance of 30 and if he had been careful he could have applied the brakes and stopped his vehicle without hitting the lorry. This admission on the part of the driver coupled with the fact that the lorry was on the left side of the road and the road in question was a broad straight road may have prompted the Court in the said case to hold that the driver of the bus alone was responsible for the accident.

7. Mr. Srishila also brought to my attention the decision in INDIAN MUTUAL GENL.INS.SOCIETY v. M.K. NAIDU 1966 A.C.J. 62 which was a case in which the deceased had parked his lorry on the road margin for a night halt and slept in front of it and another lorry coming from the opposite direction crashed into it. In view of the fact that the lorry was parked on the proper side and almost off the road it was held that there was no contributory negligence on the part of the victim in sleeping close to the stationary lorry, in front of it. The facts in Indian Mutual Gen. Ins. Society are so much at variance from the facts of the present case that it would not be safe to place reliance on the ratio of the said decision for determining the factum of negligence in the present case.

8. Learned Counsel for the claimants Mr. A.K. Bhat cited the decision in COUNCIL HOLFORD STEWART v. G.A.F. HANCOCK AIR 1940 PC 128 in which it has been held that where there is an unlighted obstruction in the roadway it cannot be said

that a careful driver of a motor vehicle is bound to see it in time to avoid it and must therefore be guilty of negligence if he runs into it. The factum of negligence is a pure question of fact and each case presents facts and circumstances of its own and a principle that holds good to a case under given facts and circumstances obtaining therein may not hold good for another case which involves even slightly different set of facts and circumstances. Having had the advantage of going through these decisions I am of the considered view the principles laid down therein cannot be applied to the present context of facts to come to a different conclusion than the one arrived at by me.

9. In the result, the appeals are allowed. The finding of the Tribunal in so far as it relates to the fixing of responsibility on the driver of the offending van alone is set aside and in its place it is held that both the drivers of the van and the stationed mini lorry were responsible for the accident in question. The appellants-claimants are entitled to claim compensation from both the owners and the insurers of the van and the mini lorry concerned.