

**(1997) 12 KAR CK 0052**  
**In the Karnataka High Court**  
**Case No : M.F.A. No. 415 of 1989**

Rama Bommayya Nayak

APPELLANT

Vs

Valaya Todiya Mohammed and Others

RESPONDENT

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**Date of Decision :** 04-12-1997

**Acts Referred:**

**Citation :** (1999) ACJ 1242

**Hon'ble Judges :** Hari Nath Tilhari, J

**Bench :** Single Bench

**Advocate :** Rajashekar and R.V. Jayaprakash, for the Appellant; C.K. Kambeyanda, for the Respondent

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## Judgement

Hari Nath Tilhari, J.—This appeal is directed against the judgment and award dated 17.9.1988, delivered by Mr. Ramakrishna, District Judge/Motor Accidents Claims Tribunal, Uttar Kannada, Distt. Karwar, in Motor Vehicles Case No. 116 of 1985, holding that the petitioner is entitled to total compensation of Rs. 1,27,000, but as petitioner's contributory negligence was also there, he may be entitled to be awarded and to grant only 50 per cent of the amount of compensation awarded, due to his negligence which was found to be 50 per cent. It held that petitioner is as such, entitled to get a sum of Rs. 63,500, as compensation out of Rs. 1,27,000 and it held that the respondent Nos. 1 to 3 in the claim petition have been jointly and severally responsible to pay the amount of compensation.

2. There is no dispute about assessment of quantum of damages as assessed by the Tribunal to be to Rs. 1,27,000 in total. The appellant's counsel has only challenged the finding of deduction of the compensation by 50 per cent, on the basis of finding recorded by the Tribunal as to contributory negligence.

The learned Counsel for the appellant contended before me that the finding recorded by the Tribunal that there was contributory negligence of the claimant-petitioner as well along with negligence of the driver of the lorry, is incorrect.

The learned Counsel for the appellant has taken me to the statements of PWs 1, 2 and 3, on record. I have perused the statements of these witnesses. The learned Counsel for the appellant further contended that, even if without conceding, it be taken that there was contributory negligence on the part of the petitioner, the Tribunal divided it to 50:50, though the greater responsibility is on the drivers of the heavy vehicles in comparison to the drivers of the light vehicles and the learned Counsel for the appellant made a reference to certain observations of the Tribunal itself and contended that in such case, this Court may reduce the proportion of contributory negligence from 50 per cent to 25 per cent.

3. As regards the first contention of the learned Counsel for the appellant, in my opinion, there is not much substance as per perusal of the record.

In the statement-in-chief, the PW 1 states that on the date of the accident, his motor bike bearing No. MYE 2853, was moving from Sonagamakki to Ankola. When he reached a cross near Belse which adjoins the national highway, a truck from Ankola side came and dashed his motor cycle. The truck came in a wrong side with a high speed and dashed his motor cycle.

PW 1 has nowhere stated that when he was taking the turn towards his right side, that is, towards the national highway from the Ankola side, he slowed his speed in order to first see that no vehicle is coming from the northern side. It appears that the appellant when coming from Sonagama-kki, he without slowing the speed for a second and watch carefully, if any vehicle was coming from the Ankola side or not, tried to take the turn.

PW 2, in the cross-examination, has stated that the said Sonagamakki Road adjoins N.H. 17, on the left side from the direction of Karwar to Kunta. To go to Ankola, one should cross N.H. 17 and then proceed. He has also stated in his cross-examination as: I have stated in my complaint that PW 1 was coming from Sonagamakki side which was adjoining N.H. 17, that accident took place on the right side of the road from Karwar to Kunta and when PW 1 was about to approach the road, the truck was at a distance of 100 feet to reach N.H. 17.

From Sonagamakki Road, there is a down gradient. It is not true to say that a person coming to N.H. 17, from Sonagamakki Road, is not able to see the vehicle coming from Karwar side, until he reaches the main road.

4. The statement of PW 2, per se reveals that a person who is coming from Sonagamakki Road can well see a vehicle coming from the side of Karwar or Ankola side before reaching the road. PW 2 has also stated that when PW 1 was about to approach the road, the truck was at a distance of 100 ft. from that place and not 10 ft., may be the truck was being driven at a high speed, but when a person could see from the Sonagamakki Road the truck coming, he was required to slow his speed also to allow the truck to pass on.

It is the case of PW 1, that is, the injured that he had seen the truck which was

at a distance of about 100 ft. from Sonagamakki Road, but he in a zigzag manner to pass out, either did not stop or when he was coming with his own speed, he did not slow down to see if any vehicle was coming from his right side, and then, the accident occurred, no doubt, because of the high speed of the truck, but it was negligent conduct of the motor-cyclist as well in not taking due care in the normal course a person ought to have taken when he is coming from the side of Sonagamakki to the national highway and when particularly, he has to take a turn.

5. It cannot be disputed that the liability of the truck drivers or the drivers of the heavy vehicles and that of drivers of light vehicles like the motor cycles, etc., is there, on such a road and they must drive it with care and with the control of speed but greater liability of taking care, exercise of control of speed is required from drivers of heavy vehicles when on road. In my opinion, the finding of the Tribunal regarding contributory negligence of the appellant cannot be said to be suffering from either error of law or fact. There remains a question to be answered as to what should be the proportion? In my opinion, the Tribunal erred in fixing it to be 50:50. The greater care and caution is required from the drivers of the heavy vehicles, such as trucks and lorries, etc., in comparison to the drivers of the light vehicles, such as motor cycle, etc., as such, it would be proper to fix the liability for accident between the appellant injured and the driver of the truck (respondent No. 1) at 30 per cent and 70 per cent respectively and accordingly, I hold that the compensation which is assessed to the tune of Rs. 1,27,000, is correct and the claimant will only be entitled to 70 per cent of the amount of compensation assessed at Rs. 1,27,000, which comes to Rs. 88,900, I put it in the round figure of Rs. 89,000.

Thus, this appeal is allowed to the extent that compensation to which the claimant has been entitled after applying the doctrine of contributory negligence, it should not be Rs. 63,500, but the claimant will be entitled to the sum of Rs. 89,000 in all, with interest assessed at the rate of 9 per cent per annum, as awarded by the Tribunal. The award is accordingly modified.

6. Let the balance of enhanced amount of compensation with interest at the rate of 9 per cent (minus the amount, if any, already paid) from the date of petition till the date of realisation be deposited by the insurance company within a period of four months from the date of receipt of the copy of this judgment. Appeal is thus, allowed in part. The respective costs of the appeal to be borne by the respective parties.