

(1980) 10 KAR CK 0027
In the Karnataka High Court
Case No : M. F. A. No. 256 of 1977

Savitribai and Another

APPELLANT

Vs

Doddappa and Another

RESPONDENT

Date of Decision : 30-10-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162, 488
Evidence Act, 1872 — Section 145, 21

Citation : (1981) ACJ 422

Hon'ble Judges : V.R. Vithal Rao, J;G.N. Sabhahit, J

Bench : Division Bench

Advocate : B.V. Deshpande, for the Appellant; Umesh R. Malimath, for the Respondent

Final Decision : Allowed

Judgement

G.N. Sabhahit, J.—This appeal by the claimants is directed against the judgment and award dated 16.11.76 passed by the Second Additional District Judge and M.A.C.T. Dharwar in M.V.C. No. 16 of 1974 on his file, dismissing the petition of the claimants for compensation.

2. It is the case of the claimants that on 13.1.1974 at about 7.30 p.m. on Poona-Bangalore road near Kundagol cross, Narayanasa, the husband of the first claimant and father of the rest of them met with an accident and died on the spot. The truck bearing registration No. MYW 4336 which was driven rashly and negligently by its driver came on the off side and dashed against Narayanasa, and Narayanasa died on the spot. The second Respondent in the petition is the owner of the truck. The first Respondent is the insurer. According to the claimants, the deceased was earning Rs. 250 per month. On that basis, they claimed compensation of Rs. 50,000 from the Respondents.

3. The first Respondent, insurance company contended that the vehicle was not covered under any insurance policy, on the date of the accident and hence the first Respondent was not liable to pay any compensation to the claimants.

4. Respondent Nos. 2 and 3 in their objections pleaded that the truck bearing No. 4336 was not the vehicle that was involved in the accident and hence they were not liable to pay any compensation.

5. Respondent No. 3 contended that he was not the employee under the second Respondent at the relevant time. The Tribunal raised the following issues as arising from the pleadings:

(1) Whether the deceased Narayanasa died in a motor accident that occurred on 13.1.1974 at about 7 30 p.m. on Poona-Bangalore road near the petrol bunk near Kundagol cross ?

(2) Whether the said accident was due to the rash and negligent driving of the truck bearing No. MYW-4336 by its driver ?

(3) Whether Respondent No. 1 is not liable to pay any compensation to the Petitioners for the reasons alleged in para-2 of its objection statement ?

(4) Whether on the date of the accident, Respondent No. 3 was in the employment of Respondent No. 2 as a driver ?

(5) To what compensation, if any, are the Petitioners entitled, and from whom ?

6. During hearing, the claimants examined P. Ws. 1 to 4 and got marked Exts. P-1 to P-6. As against that, the Respondents examined two witnesses namely, D-W. 1 the owner of the truck and D.W. 2 the representative of the insurance company.

7. The Tribunal, appreciating the evidence on record, held that the accident was the result of rash and negligent driving of the truck by its driver. But, it further held that the Petitioners failed to establish that it was the truck in question that caused the accident and in that view, the Tribunal dismissed the petition for compensation by its judgment and order. Aggrieved by said judgment and order, the original claimants have come up in appeal before this Court.

8. The learned advocate Mr. Kulkarni appearing for the Appellants vehemently contended that the Tribunal was not justified in holding that the Petitioners failed to establish that the truck in question was the truck which was mentioned in the petition. He further submitted that the Tribunal was not justified in not placing reliance on Ext. P-6 an admission made by P.W. 1-the owner of the truck before the Investigating Officer in the criminal case against the driver. He further submitted that the Tribunal was not justified in disbelieving the evidence of P.W. 2, an eyewitness to the occurrence. He also pointed out that circumstantial evidence, namely, damage to the truck amply corroborated the evidence of P.W. 2 and so he submitted that the Tribunal was in error in not coming to the conclusion that the truck in question was the truck which caused the accident by the rash and negligent driving by its driver. Hence, he submitted that the appeal should be allowed and the claimants should be awarded compensation.

9. As against that, the learned advocate Mr. Umesh Malimath strenuously argued supporting the judgment and order of the Tribunal. He submitted that in case this

Court comes to the conclusion that the truck in question was the truck which caused the accident, the case should be remanded.

10. The points, therefore, that arise for our consideration in this appeal are:

(1) Whether the Tribunal was justified in holding that the claimants failed to establish that the truck mentioned in the petition was the very truck which caused the accident by the rash and negligent driving by its driver ?

(2) Whether the case requires to be remanded ?

(3) What is the quantum of compensation, if any, to which the claimants are entitled and from whom ?

11. In the instant case, P.W. 2 has deposed that he was an eye-witness to the occurrence and that it was the truck in question which caused the accident. It is in evidence that the truck was found damaged. The oral evidence, therefore, finds corroboration in the circumstantial evidence, namely, that the truck was damaged. The Claims Tribunal, however, has disbelieved the evidence of this witness solely on the ground that he did not disclose the number of the truck before the Investigating Officer. It is a matter of common knowledge that when the Investigating Officer records a statement he asks questions and elicits answers. If the Investigating Officer has not put the witness a specific question as to the number of the truck, there was no occasion for the witness to disclose it. Hence, in our considered view, the Tribunal was not justified in disbelieving the evidence of P.W- 2 solely on the ground that the Investigating Officer did not elicit the number of the vehicle in his statement.

12. The Tribunal has further committed a mistake in thinking that Ext P-6 the statement made by the owner of the truck before the Investigating Officer specifically and in clearly admitting that the accident was caused by the truck in question on the said date and time could not be relied upon and that it could be used only for the purpose of contradicting the witness as contemplated u/s 145 of the Indian Evidence Act.

13. Two questions of law arise on this aspect for our consideration they are:

(1) Whether the statement made by a witness in the criminal case during investigation could be used in a civil proceeding for any purpose ?

(2) Whether an admission made by a concerned person in his statement before the police can be relied upon as substantive evidence ?

14. Section 162 of Crl. P.C. speaks about the use of statements before the police made during investigation. It reads:

1. No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise or any part of such statement or record, be used for

any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

Thus, it is quite obvious that such statement should be used as mentioned in Section 162 Cr. P.C. at an enquiry or trial in respect of any offence under investigation at the time when such statement was recorded. Thus, it becomes manifest that the restriction contemplated in Section 162 Cr. P.C. is confined only to the trial of the offence which was under investigation during which the statement was recorded;

15. In the case of Purshottam Jethanand Vs. The State of Kutch, the Supreme Court has observed thus:

The, statutory right of the accused to be furnished with statements relates to a trial in respect of the very offence which was investigated and does not apply to a trial for a non-cognizable offence in respect of which there has been in fact no investigation. The proviso to Section 162(1) which gives the right to obtain copies relates to "such inquiry or trial", i.e., to enquiry or trial of any offence under investigation (under this chapter) at the time when the statement was made.

In other words, what is contained in Section 162 Cr. P.C., directly relates only to the trial of the offence under investigation in a criminal case when statements of the witnesses were recorded and not to any other case.

15.1 In the case of Pattammal Vs. M. Munuswami, the High Court of Madras has made it clear that the statement recorded by the police during investigation of a criminal case can be used in a civil proceeding and if the statement amounts to an admission it can be used as a piece of substantive evidence. In that case the High Court of Madras has observed thus:

In the course of a police enquiry with respect to a theft case against A, one B made a statement that she had been intimate with A and lived with him as his wife. Later on, in the proceedings u/s 488 taken up by B against her husband C, the Court treating the statement made by B to the police as admission of adultery by her, refused maintenance to her.

The High Court in that connection has held:

That Section 162 did not forbid the statement made by B in the police enquiry to be used in the proceedings u/s 488 because the proceeding u/s 488 could not be said to be the trial in respect of the offence under investigation at the time when the statement u/s 162 was made by B. The statement was admissible.

The High Court has also ruled:

That the statement made by B were admissions which could be used against her u/s 21 Evidence Act also. Section 25 Evidence Act would not prohibit their admission in respect of proceedings u/s 488.

Therefore, it is obvious that an admission made by the owner of the truck before the police during investigation of the criminal case against the driver would be relevant and admissible in the proceedings before the Tribunal. Section 162 of the Code of Criminal Procedure would not be a bar.

16. The next point for our consideration would be: What is the value of this admission. The Supreme Court of India in the case of *Bharat Singh and Another Vs. Bhagirathi*, speaking through his Lordship Raghubar Dayal, J, has observed in para 19 of the judgment thus:

Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness u/s 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness.

Thus, the Supreme Court has made it very clear that an admission becomes a piece of substantive evidence against the person who makes it under Sections 17 and 21 of the Evidence Act and that it is not even necessary for the person relying on it to confront the said admission to the witness who has made it. This proposition of law laid down by the Supreme Court is further reiterated in the case of *Bishwanath Prasad and Others Vs. Dwarka Prasad and Others*, wherein His Lordship Justice Krishna Iyer who delivered the judgment for the Bench has observed in para 8 of the judgment thus:

There is a cardinal distinction between a party who is the author of a prior statement and a witness who is examined and is sought to be discredited by use of his prior statement. In the former case, an admission by a party is substantive evidence if it fulfils the requirements of Section 21 of the Evidence Act; in the latter case a prior statement is used to discredit the credibility of the witness and does not become substantive evidence. In the former there is no necessary requirement of the statement containing the admission having to be put to the party because it is evidence *proprio vigore*; in the latter case the Court cannot be invited to disbelieve a witness on the strength of a prior contradictory statement unless it has been put to him, as required by Section 145 of the Evidence Act. This distinction has been clearly brought out in the ruling in *Bharat Singh's* case.

In the instant case we are concerned with the admission of the owner of the vehicle which caused the accident. It is the case of the claimants that he has made an admission against his own interest in the statement before the police

and they have proved the statement by examining the Investigating Officer as P.W. 4 in the case. The admission is marked and admitted into evidence as Ext. P-6. Ext. P-6 is a very clear and unambiguous admission of the owner that it was the truck the number of which is mentioned in the petition that caused the accident, that it was his cleaner who was driving the truck at the relevant time and that the truck dashed against the deceased Narayanasa and killed him on the spot. The relevant portion reads:

x x x x.

Thus as stated above there is a very clear admission that the truck which caused the accident was the truck bearing. No. MYW 4336 which belongs to Respondent No. 1 in this appeal. Therefore, the Tribunal should have relied upon this clear admission of the owner duly proved by the evidence of P.W. 4, the Investigating Officer. The Tribunal instead of doing so, has observed that it is merely a previous statement of a witness, which is not correct, in our considered view, for reasons discussed above.

17. Apart from the evidence of P.W. 2 we have thus the clear admission of the owner of the truck that it was the same truck namely, the truck in question that caused the accident. This clear admission is decisive as it is not explained in any way by its maker in his evidence. That being so, the truck which caused the accident and killed Narayanasa was the very truck mentioned in the claim petition. Hence, we have no hesitation to hold that the Tribunal was in error legally in thinking that the claimants did not establish that the truck in question was the truck which caused the accident. We are satisfied and we find that the truck in question was the truck which caused the accident.

18. The Tribunal after discussing the evidence has come to the conclusion that the accident was the result of rash and negligent driving of the truck by its driver. The evidence on record clearly establishes it. We have no reason to differ from that finding of the Tribunal.

19. That leads us to determination of compensation. Before we discuss that aspect, it is necessary to advert to the argument of the learned Counsel that the case should be remanded, instead of this, this Court is deciding on compensation. We are unable to agree with the submission so made. The case is already sufficiently led, the accident having taken place on 13.1.1974. The parties have adduced evidence on all aspects of the case. The Tribunal has considered all issues and has given its findings. Hence, there is no reason to remand this case to the Tribunal. Therefore, we proceed to assess the evidence to fix the quantum of compensation to which the claimants are entitled.

20. It is in evidence that the deceased was 60 years of age as can be seen from the post mortem report and the evidence of P.W. 3 Dr. Umashankar. The Tribunal having regard to this fact and the work that he was doing has fixed the income of the deceased at Rs. 150 per month. The deceased, if he was alive, would have spent Rs. 100 for his personal expenses. Deducting Rs. 100 for that we hold that

he could contribute to his family Rs. 50 per month. Therefore, the annual loss of dependency would be Rs. 600. It is probable that he could live for another ten years. Therefore, total loss of dependency would be Rs. 6,000. Deducting Rs. 1,000 for lump sum grant and uncertainties of life, the net loss of dependency would be Rs. 5,000. To this has to be added Rs. 5,000 towards loss to the estate of the deceased. That gives us global compensation of Rs. 10,000.

21. Claimant No. 1 is the widow of the deceased and rest of them are his major children. The compensation for loss of dependency shall go to the first claimant, the widow of the deceased. Regarding Rs. 5,000 awarded towards loss to the estate of the deceased, the inheritance is under personal law. Therefore, every child and widow shall be given Rs. 1,000 each, from out of the total amount granted under the head.

22. In the result, therefore, the appeal is partly allowed. The judgment and award of the Tribunal are set aside. The claimants are awarded global compensation of Rs. 10,000 along with interest at 6% per annum from the date of petition till payment and the compensation shall be given in the proportion indicated above with interest. Respondent No. 2 (in the claim petition) the owner of the vehicle shall pay the same to the claimants; he shall also pay the costs of the claimants in this proceeding throughout, to the first claimant the widow of the deceased.