

(1984) 07 KAR CK 0005
In the Karnataka High Court
Case No : Misc. First Appeal No. 938 of 1983

S.D. Balaji

APPELLANT

Vs

General Manager, Karnataka State Road Transport
Corporation

RESPONDENT

Date of Decision : 04-07-1984

Acts Referred:

Citation : (1985) ACJ 150

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

Bench : Division Bench

Advocate : K.T.G. Prasad, for the Appellant; N.D.R. Ramachandra Rao, for the Respondent

Final Decision : Allowed

Judgement

G.N. Sabhahit, J.—This appeal by the claimant is directed against the judgment and award dated 17-12.1982 made by the Motor Accidents Claims Tribunal, Bangalore City, in M.V.C. No. 577 of 1981, on its file, awarding compensation of Rs. 24,000/- to the claimant and deducting 1/3rd of it for contributory negligence of Suvega rider.

2. The relevant facts are these: On 24.5.1981 at about 4.30 p.m. the present claimant was going on the pillion of the Suvega on the 5th Main Road, Srirampuram III Cross, from west to east. The Suvega, according to him, was driven carefully and cautiously keeping to its correct side. The BTS bus, however driven by the 2nd Respondent at a high speed and in rash and negligent manner, came from the northern side and dashed against the Suvega as a result of which, the pillion rider as well as the driver of the Suvega fell down sustaining injury. The present claimant, pillion rider, was removed to the K.C. General Hospital for treatment. As a result of the accident, he sustained fracture of his left leg as well as of right thigh. He was an inpatient in the Victoria Hospital and underwent an operation over his thigh where steel rod was inserted. He asserted that he has to undergo one more operation. The right leg of the claimant has become disabled

as a result of the fracture. He is not in a position to squat, stand straight, walk or run. He claimed compensation of Rs. 83,000/- from the Respondents. Respondent 1 is the General Manager of the KSRTC and Respondent 2 is the driver of the bus in question at the relevant time. They resisted the claim. They contended that the accident was not due to rash and negligent driving of the bus in question. According to them, the accident was due to rash and negligent driving of the Suvega itself. Alternatively, they contended that the claim made was very excessive. The Tribunal raised the following issues as arising for its consideration:

(1) Whether the Petitioners establishes that he sustained injuries in the accident on 24.5.1981 at about 4.30 p.m. on account of rash and negligent driving on the part of the Respondent driver as alleged in the petition?

(2) If so, whether he is entitled for any compensation, for what amount and from whom?

(3) What award?

3. During hearing, the claimant examined himself and he got marked Exhs. P-1 to P-19. As against that, the Respondent-KSRTC examined the driver of the bus as RW 1. The Tribunal held that the accident was due to rash and negligent driving of the Suvega as well as the bus. It fixed the proportion of contribution at 1/3rd on the part of Suvega and 2/3 on the part of the bus and in that view, the Tribunal awarded compensation of Rs. 24,000/- and deducting 1/3 of the same on account of negligence on the part of Suvega rider, awarded rest of the amount to the claimant with interest and cost. Aggrieved by the said judgment and award, the pillion rider, the injured claimant, has come up with the above appeal before this Court.

4. Learned Counsel for the Appellant strenuously urged before us that the Tribunal was not justified in deducting 1/3rd of the damages awarded as there was no contributory negligence at all on the part of the pillion rider. So far as he was concerned, the accident was due to composite negligence on the part of driver of the Suvega and the driver of the bus in question. He next submitted that the compensation awarded towards general damages was very much on the lower side. As against that, the Learned Counsel appearing for KSRTC, the owner of the bus in question, argued that the accident was not the result of the rash and negligent driving of the bus in question. According to him, the compensation awarded was just and proper, if not on the higher side.

5. It may at once be noted that the Learned Counsel for the Respondent could not argue on the question of actionable negligence on the part of the driver of the bus. There is no cross-objection in this appeal and according to him, the appeal preferred by the KSRTC was dismissed at the admission stage itself. That being so, the finding that the accident was the result of the rash and negligent driving of the bus in question has become final. He cannot re-agitate the question at this stage.

6. Therefore, the points that arise for our consideration in this appeal are:

(i) Whether the Tribunal was justified in deducting 1/3rd of the compensation to the claimant because the Suvega rider was also at fault and contributed to the cause of the accident by 1/3rd?

(ii) Whether the compensation awarded is just and proper?

We take up the second point first for consideration. The evidence on record clearly establishes that the claimant suffered a fracture of the right femur and he also suffered fracture of the bone below the knee. Even after long treatment, he is still limping on account of shortening of right leg by 2" and his knee joint has become stiff. He cannot squat, he cannot walk fast and he cannot run. He has to suffer these defects throughout his life. He was student of II PUC. According to him, he was 16 years of age. Therefore, the compensation has to be awarded for the injuries, pain and suffering, loss of amenities and the disability incurred keeping in mind the loss of earning capacity. The Tribunal also should bear in mind the awards made in comparable cases while awarding general damages. Taking all these into consideration, we hold that Rs. 30,000/- would be the proper amount of compensation on the facts of this case, instead of Rs. 18,000/- awarded by the Tribunal. The Tribunal has, in addition, awarded Rs. 6,000/- towards special damages. The evidence on record shows that the claimant was in hospital for 25 days. He was in plaster cast for more than two months and he had been operated in Madras where he was kept as inpatient for 15 days. Taking all these into consideration, we hold that Rs. 6,000/- awarded as special damages is just and proper. Therefore, the claimant is totally entitled to compensation of Rs. 36,000/- instead of Rs. 24,000/- as awarded by the Tribunal.

7. We shall next consider whether any amount has to be deducted in global compensation. The Tribunal deducted 1/3rd of it on the basis that the driver of the Suvega was also responsible for the accident and he contributed 1/3rd to the cause of the accident. It is obviously illegal. The Tribunal has confused itself without making any distinction between the contributory negligence and composite negligence. The Suvega rider, no doubt, contributed to the cause of the accident and to that extent, he was liable for the cause of the accident. But it is not so with the pillion rider. He has nothing to do with the driving of the Suvega. So far as he is concerned, the accident was the result of composite negligence both on the part of the driver of Suvega and the driver of the bus and it is settled law in torts that the injured can proceed against any one of the joint tortfeasors who are jointly and severally liable to pay the compensation. Therefore, the Tribunal was not justified in deducting 1/3rd of the total compensation awarded in the case of pillion rider, who had nothing to do with the occurrence of the accident.

8. In the result, therefore, the appeal is partly allowed. The compensation awarded by the Tribunal at Rs. 24,000/- is enhanced to Rs. 36,000/- . The KSRTC shall pay the same along with interest at 6% per annum from the date of

petition till payment as also the costs of the claimant before the Tribunal from out of the special insurance fund of the KSRTC. No costs in this appeal.