
(2010) 07 BOM CK 0044
In the Bombay High Court
Case No : FA. No. 95 of 1995

Shivananda Basavanappa Konapure

APPELLANT

Vs

Vishwanath Tatya Koli and Another

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Citation : (2011) 1 TAC 442

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : G.S. Godbole, for the Appellant; A.S. Rao, for the Respondent

Judgement

D.G. Karnik, J.—Heard.

This appeal is directed against the judgment and order dated 1st March, 1994 passed by the Member, Motor Accident Claims Tribunal (for short "the Tribunal") awarding compensation of Rs. 25,000/- to the Respondent No. 1.

2. The Appellant is the owner of a truck which was involved in the accident. On 23rd November, 1987, the Respondent was waiting at the S.T. bus stop for arrival of a S.T. bus going to village Mohol. On seeing the truck belonging to the Appellant coming, he stopped it and with the driver's consent boarded the truck by payment of a hire charges of Rs. 2/-. While on the way, the truck met with an accident in which the Respondent No. 1 was seriously injured and the injury resulted into a permanent disablement. The Respondent No. 1, therefore, filed a claim petition before the Tribunal. By the impugned order, the Tribunal allowed the claim petition and directed the Appellant to pay to the Respondent No. 1 compensation of Rs. 25,000/- together with interest at the rate of 12% per annum. Respondent No. 2, with whom the truck was insured, was absolved of the liability on the ground that the policy of insurance prohibited carrying any passenger for hire and the Respondent No. 1 was travelling in the truck by breach of the conditions of the policy. Aggrieved by the decision of the Tribunal, the Appellant owner is in appeal.

3. Learned Counsel for the Appellant admitted that the Respondent had not proved negligence on the part of the driver of the truck and, therefore, the Petitioner was not liable to pay the compensation. Secondly, he urged that the driver of the truck had no authority to take a passenger on the way and the act of driver taking the Respondent No. 1 as a passenger for hire was contrary to the terms of employment. As such, the owner was not liable.

4. As regards the negligence, it is necessary to state that the accident occurred because the truck dashed a tree which was by the side of the road. Ordinarily, a motor vehicle is expected to be driven on the road. It is not expected to move beyond the width of the road and hit any tree by the side of the road. The principle "res ipsa loquitur" squarely applies to the facts of the present case. The truck driver was killed in the accident and hence could not be examined. No explanation however was offered for not examining the cleaner on the truck. No other witness was examined by the Appellant owner to show how the accident occurred. In the circumstances, I see no error in the decision of the Tribunal holding that the accident was caused on account of negligence of the driver of the

5. As regards the contention that the driver was not authorised to take any passenger on board, the Appellant did not produce the agreement of employment between him and the driver. The terms of employment of the driver were not proved. Ordinarily, when an owner of a motor vehicles hands over the vehicle in the custody of another with an authority to use and drive it and no restrictions are imposed on him, the person to whom the motor vehicle is given would have a general authority to drive and use the vehicle in the same manner as the owner would do. The driver, therefore, had a implied authority to allow the Respondent No. 1 to take the Respondent No. 1 on board. The defence that the driver was acting beyond the course of his employment and had no authority to take the Respondent No. 1 as a passenger cannot be accepted in the absence of any material produced by the owner to show what were the terms of employment of the driver.

6. No other point was urged.

There is no merit in the appeal which is hereby dismissed. Since, the Respondents have not appeared before this Court, there shall be no order as to costs.