
(1991) 12 KAR CK 0027
In the Karnataka High Court

Smt. Gouri Bi and Others

APPELLANT

Vs

Khemraj and Others

RESPONDENT

Date of Decision : 06-12-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 110 A, 92 (A), 95 (1) (b) (i), 96 (2) (b) (ii)

Citation : (1992) 1 ACC 583

Hon'ble Judges : M. Rama Jois, J;B.N. Krishnan, J

Bench : Division Bench

Judgement

M. Rama Jois and B.N. Krishnan, JJ.—These 105 appeals have been preferred by the various claimants who title Claim petitions seeking to recover compensation in respect of either the injuries sustained by them or the death of some one on whom they were dependent for their sustenance, being aggrieved by the dismissal of the petitions preferred by them u/s 110-A of the Motor Vehicles Act, (for short "the Act") The Tribunal without recording any evidence, came to the conclusion that the accident in which the several persons sustained injuries or died, could not be held to arise out of the user of the motor vehicle and as such it had no jurisdiction to try the Claim petitions.

2. The case put forward by the claimants in all the cases in brief is as hereunder:

On 30th October, 1985 a tanker truck bearing registration No. MST-6277 belonging to the 2nd respondent filled with motor spirit at Wadla Terminal, Bombay left Bombay towards its destination viz., Hyderabad. On 1.11.1985 at about 7.20 A.M. it was on National Highway No.9 near Tadola village within the limits of Basavakalyan taluka and respondent-1 drove the same in a rash and negligent manner and took it to the extreme left side which resulted in toppling of the vehicle and falling in a land adjacent to the road. The driver ran away from the scene leaving the tanker unattended, in a highly dangerous position. The passers by were ignorant of what had happened there and the injured claimants as also the deceased went to the spot to know as to what was happening there and suddenly there was fire in the tanker due to its bursting and the entire area

was engulfed in fire and about 70 persons died and 35 persons sustained injuries. Therefore the various claimants sought for recovery of different sums from the owner, driver and the insurer of the vehicle in question as also from Hindustan Petroleum Corporation Ltd., to whom the motor spirit belonged.

3. 2nd respondent the owner of the truck has denied that the accident took place as narrated in the petition. It has been pleaded by him that near Tadola one person suddenly tried to cross the road in front of the vehicle and in order to save his life, the driver took the truck to the left side and stopped it and thereafter the driver and cleaner got down from the vehicle to answer calls of nature. At that time many persons from neighboring village came there with buckets, drums, pots and cans to take away the petrol from the tanker thinking that it was kerosene. They also carried with them iron rods, sticks and hammers and they opened the bolts of the container and were engaged in taking away the petrol. At that time the driver and the cleaner requested them not to do so as petrol was highly inflammable and without heeding to their warning the villagers started to collect the petrol in cans, pots, buckets and tins and at that time one person was smoking bead or cigarette carelessly and on that account the petrol caught fire and the various persons who were engaged in stealing away the petrol were caught in the fire and sustained injuries. Therefore it was urged that the incident took place on account of the gross negligence on the part of the victims and it was not due to the user of the vehicle and as such the Tribunal had no jurisdiction to entertain these Claims. Hindustan Petroleum Corporation contends that it is not a necessary party to the proceedings and therefore the Claim should be rejected.

4. On these pleadings the tribunal raised a number of issues including issue No. 1 which reads as hereunder:

Whether this Claim Tribunal has no jurisdiction to try this petition as contended by respondent-3 ?

Though it was contended on behalf of the claimants that the question of jurisdiction being a mixed question of law and fact, without recording any evidence, it could not be heard as a preliminary issue, the Tribunal without recording any evidence proceeded to hold that the accident could not be held to have arisen due to the user of the vehicle and as such it had no jurisdiction to try the Claim petition.

5. It is the legality and correctness of this finding recorded by the Tribunal that have been questioned by the claimants in these appeals.

6. The learned member of the Tribunal without even affording an opportunity to the claimants has proceeded to record his finding that the driver of the vehicle was not rash or negligent and that mere dripping of petrol could not catch fire without the agency of ignition and someone from the crowd who had gathered must be responsible for the said catching of the fire. This attitude on the part of the Tribunal in proceeding to record the finding on the several aspects urged by

the claimants without affording any opportunity to them to substantiate their contentions in this regard, cannot be upheld. Therefore, the order of the Tribunal should be set aside and the case should be remitted back to it with a direction to afford an opportunity to the parties to adduce evidence. But it was contended by Sri. H.G. Ramesh who appears for the insurer that the question relating to maintainability of the petition should also be left open to be decided by the Tribunal after such remand, whereas, it was contended by Sri P.A. Kulkarni learned Advocate for claimants in all these cases that on the averments made in the case, in view of the settled law, a clear finding should be recorded by this Court on that aspect and only on the other aspects viz., pertaining to the averment of the claimants that on account of the rashness or negligence of the driver and the cleaner in relation to the vehicle in question, the accident had happened and also the quantum of compensation, the matter should be remitted to the Tribunal. Therefore the only aspect that remains to be considered is whether this Court on the available material could record a finding regarding the maintainability of the petition before the Tribunal.

7. The relevant portion of Section 110 of the M.V. Act reads as hereunder:

110(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals for such area as may be specified in the notification for the purpose of adjudicating upon Claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising or both:

Provided that where such Claim includes a Claim for compensation in respect of damage to property exceeding rupees two thousand, the claimants may, at his option, refer the Claim to a civil court for adjudication, and where a reference is so made, the Claims Tribunal shall have no jurisdiction to entertain any question relating to such Claim.

(emphasis supplied)

Section 92(A) of the Act which was incorporated in the Act by Act No. 47 of 1982 whereby no fault liability was created, wherein also the phrase "arising out of the use of motor vehicle or motor vehicles" occurs, reads as hereunder:

92A. (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this Section.

(emphasis supplied)

The meaning of this phrase "arising out of the use of vehicle" occurring in Section 92A of the Act had come up for consideration before the Supreme Court in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, It has been

pointed out in this decision the phrase "arising out" of cannot be equated to the phrase "arising under" and the phrases "caused by" and "arising out of" often used in statutes in the context of motor accidents again do not have the same meaning. The decision Of the House of Lords in *Samick Lines Co. Ltd. v. Owners of the Antonis P. Lemos* 1985 (2) WLR 478 Para 32 wherein the phrase "arising out of" was construed to have the wider meaning than the phrase "arising under" and the former phrase means connected with, was cited with approval in this decision. With reference to the phrase "caused by" and "arising out of" this is what has been observed by the Supreme Court--

33. In the context of motor accidents the expressions "caused by" and "arising out of" are often used in statutes. Although both these expressions imply a casual relationship between the accident resulting in injury and the use of the motor vehicle but they differ in the degree of proximity of such relationship. This distinction has been lucidly brought out in the decision of the High Court of Australia in *Government Insurance Office of N.S.W. v. R.J. Green's* case 1965 (114) CLR. 437 (supra) wherein Lord Barwick C.J. has stated:

Bearing in mind the general purpose of the Act I think the expression "arising out of" must be taken to require a less proximate relationship of the injury to the relevant use of the vehicle than is required to satisfy the words "caused by". It may be that an association of the injury with the use of the vehicle while it cannot be said that use was causally related to the injury may yet be enough to satisfy the expression "arise out of" as used in the Act and in the policy.

34. In the same case *Windeyer, J.* has observed as under:

The words "injury caused by or arising out of the use of the vehicle" postulate a causal relationship between the use of the vehicle and the injury. "Caused by" connotes a "direct" or "proximate" relationship of cause and effect. "Arising out of" extends this to a result that is less immediate; but it still carries a sense of consequence.

35. This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92-A, the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

(Emphasis supplied)

It was vehemently contended by Sri H.G. Ramesh that these findings on the question of law must be read in the background of the findings recorded by the Supreme Court in paragraph 29 that they did not find any ground for interfering with the findings recorded by the High Court that there was no evidence whatsoever that the persons in respect of whose deaths compensation had been Claimed themselves were actually committing theft or pilfering petrol at the time of their deaths and the victims could have been the curious bystanders at the site of the accident and that the papers produced in the case did not establish that the fire was ignited by someone carelessly throwing a match stick and the Supreme" Court proceeded on the basis that the persons who sustained injuries as a result of explosion and fire, were not indulging in any unlawful activity which may have caused such explosion and fire. It is true that the Appellate Bench of the High Court recorded a finding as mentioned above and the Supreme Court also put its seal of concurrence on the said finding. But nevertheless an examination of this reported decision shows that the said finding of fact did not have any kind of impact on the wider meaning given to the phrase "arising out of used in Section 92-A of the Act. When that is so, it cannot be said that the interpretation given to this phrase by the Supreme Court occurring in Section 92-A of the Act cannot be put to any use in any case unless a finding is recorded similar to the finding recorded in that case. It must be remembered, after all, it is the law declared by the Supreme Court that is binding on all the Courts by virtue of Article 141 of the Constitution of India and not the finding of fact recorded by the Supreme Court that is made binding. In that view of the matter, we are not at all persuaded by the argument of Sri H.G. Ramesh that the wider meaning given to the phrase "arising out of cannot be put to any kind of use unless a finding analogous to the finding recorded in the said case is recorded.

8. We may now examine the finding of the Tribunal regarding maintainability of these petitions before it, as also the finding relating to jurisdiction from two aspects. It is a fairly well settled proposition that one should look to the plaint averments to determine jurisdiction of the Court. If any authority is necessary to the said proposition, we may refer to the decision of the Supreme Court in *Abdulla Bin Ali and Others Vs. Galappa and Others*, . It has been observed:

There is no denying the fact that the allegations made in plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement:

We are, therefore, of the considered opinion that on the allegations made in the plaint the suit was cognizable by the civil court and that the High Court has erred in law in non-suiting the plaintiffs-appellants on the ground that the civil court had no jurisdiction.

If we have to look only to Claim petitions for purpose of finding but the maintainability and jurisdiction, in the background of the wider meaning given to "arising out of the use of motor vehicle", there could be no doubt that the accident as set up by the claimants is "arising out of the use of motor vehicle.

9. What was urged by Sri H.G. Ramesh was that whether the accident has taken place as stated by the claimants or whether it has occurred as stated by the respondents is a disputed question of fact and only after resolving the said dispute, the Court could record a finding on the maintainability of the petition. In our opinion the plea raised by the respondents has a bearing only on the question of actionable negligence and quantum of compensation to be awarded, but is not germane to the question of the jurisdiction of the Tribunal to adjudicate the Claim; which as held above depends entirely in the averments in the Claim petition.

10. In the result, the orders passed in all these cases dismissing the petitions are set aside and on the other hand it is held that the Tribunal has the jurisdiction to entertain these petitions and the cases are remitted back to its file with a direction to afford opportunity to both sides to adduce evidence on the disputed, questions of fact namely, actionable negligence and quantum and thereafter to dispose of the cases according to law.

The appeals are allowed only to the extent indicated above.

11. The parties were represented by Counsel, are directed to appear before the Court below on 17th January 1992 without further notice. If any of the parties remain underrepresented on the said day, the Court shall take steps for issue of notice only to such parties and give further date of hearing.