

(2010) 03 KAR CK 0225
In the Karnataka High Court
Case No : M.F.A. No. 11336 of 2008

Smt. H.S. Swarnalatha, H.S. Bhavatharini and H.S. Amithdev	APPELLANT
Vs	
The Vice Chairman and Managing Director K.S.R.T.C. Central Depot.	RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173 (1)

Citation : (2011) ACJ 990 : (2011) 1 KarLJ 67

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Bhushani Kumar, for the Appellant; F.S. Dabali, for the Respondent

Judgement

K.N. Keshavanarayana, J.—This appeal filed u/s 173(1) of the Motor Vehicles Act, 1988 by the claimants is directed against the judgment and award dated 5.9.2008 passed by the Additional Civil Judge (Sr. Dn.) and MACT, Tumkur in MVC. No. 745/2000.

2. The appellants as wife and children of deceased Sreedhar filed claim petition u/s 166 of the Motor Vehicles Act seeking compensation of Rs. 26,01,980/- for the death of said Sreedhar in the motor vehicle accident that occurred at about 00.30 hours in the intervening night of 6/7.2.2000. According to the case of the claimants, in the night of 6.2.2000 deceased Sreedhar boarded the KSRTC bus bearing registration No. KA-22F-833 to go to Mangalore. While the bus was proceeding on Kushalnagar-Madikere Section of the National Highway, at about 00.30 hours on 7.2.2000 near Madapatna Village, the bus collided with an ongoing Tractor-Trailer bearing registration No. KA-12-5-370 as a result of which the deceased who was sitting in the front row behind the driver, suffered grievous injuries and immediately he was shifted to Government Hospital at Kushalnagar where he succumbed to the injuries at about 2.00 a.m. on the same day. Thus according to the claimants, the accident was solely due to the negligence of the driver of the KSRTC bus. Therefore, the claim petition was filed

against the KSRTC. It was the further case of the claimants that the deceased who was aged about 46 years was working as a Clerk in Vysya Bank and at the relevant point of time was getting a monthly salary of Rs. 11,305/- and he was the only bread earner of the family and as a result of untimely death of the deceased the claimants are left with no source of livelihood.

3. The claim petition was contested by the KSRTC inter alia on the ground that the accident was not due to the negligence of the driver of the KSRTC bus but it was solely due to the negligence of the driver of the Tractor-Trailer, therefore the KSRTC is not liable to pay any compensation as such the claim petition is bad for non-joinder of the necessary parties namely the driver, the owner and the insurer of the Tractor-Trailer. The KSRTC also disputed the other averments made in the claim petition regarding the age and income of the deceased.

4. In the light of the pleadings of the parties, the Tribunal framed the following issues:

1. Whether the claimants prove that on 7.2.2000 at 0.30 hours on Kushalnagara - Madikere National Highway near Mahapatna Village, Sreedhar written statement travelling in KSRTC bus bearing No. KA-22-F-833, then there was accident due to wrongful use of said bus by its driver, which dashed against a T.T. Unit bearing No. KA-12-T-370, as a result Sreedhar sustained severe injuries and succumbed to the injuries in the hospital?

2. Whether the claimants prove that they are the LRs. and dependents of Sreedhar?

3. To what compensation the claimants are entitled and from who?

Addl. Issue:

1. Whether the petition is bad for nonjoinder of necessary parties?

5. During enquiry, the first claimant examined herself as PW1 and two more witnesses as PWs. 2 and 3 and got marked Exs.P.1 to P.15. On the other hand, the driver of the KSRTC bus was examined as RW.1 and Exs.R.1 to R.13 were marked. After hearing both sides, the Tribunal on assessment of the oral and documentary evidence, by the judgment under appeal, answered issue No. 1 in the negative and in the light of the said finding, dismissed the claim petition without going into the quantification of the compensation. Being aggrieved by the dismissal of the claim petition, the claimants are in appeal before this Court.

6. Upon service of notice of this appeal, the respondent - KSRTC has appeared through its counsel. We have heard the learned Counsel for the parties and perused the records.

7. Smt. Bhushani Kumar, learned Counsel appearing for the appellants contented that, the Tribunal has committed error in dismissing the claim petition placing reliance on the findings recorded by the Member of another Tribunal at Mysore in a like claim petition arising out of the same accident; that the learned Member of

the Tribunal ought to have considered the present case on the basis of the evidence available on record and ought to have recorded a proper finding with regard to the negligence; that having regard to the evidence on record, the accident was solely due to the negligence of the driver of the KSRTC bus as the accident has occurred beyond the road median and the driver of the KSRTC bus could not bring the bus to a halt even after seeing the oncoming Tractor-Trailer from a distance of 100-150 ft.; that according to the sketch prepared by the Police at the time of mahazar which is produced by the respondent - KSRTC and marked as Ex.R.4, the accident has occurred almost at the center of the road and therefore, the Tribunal is not justified in holding that there was no negligence on the part of the driver of the KSRTC bus; Alternatively she contended that, even if it is held that the driver of the KSRTC bus was not solely responsible for the accident, it would be a case of composite negligence of the drivers of both the vehicles in which event the claimants are entitled to proceed against any one of the joint tort-feasors, therefore, the Tribunal is not justified in dismissing the claim petition on the ground that the owner and the insurer of the other vehicle are not parties to the petition. In this behalf, the learned Counsel placed reliance on two Full Bench decisions of this Court in the case of Ganesh v. Syed Muned Ahamed and Ors. reported in ILR 1999 Kant403 and in the case of Karnataka State Road Transport Corporation, by its Managing Director v. Arun @ Aravind and Ors. reported in ILR 2004 Karnataka 26. It is her submission that in view of the legal position as laid down in the above decisions, the Tribunal ought to have allowed the claim petition by quantifying the compensation payable to the claimants. She further submitted that though the Tribunal has not quantified the compensation payable, since the materials available on record are sufficient for this Court to record a finding with regard to the quantum of compensation payable, there is no need or occasion for remanding the matter to the Tribunal only for the purpose of quantification of the compensation and on the other hand, this Court itself could quantify the compensation payable on the basis of the evidence available on record; It is her further submission that since the deceased was a permanent employee of the Vysya Bank, and was aged 46 years as on the date of death, in the light of the decision of the Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , 30% of his last drawn salary should be added towards the future prospect and on that basis the loss of dependency has to be quantified.

8. On the other hand, Sri F.S. Dabali, learned Counsel appearing for respondent - KSRTC sought to justify the judgment of the Tribunal and contended that the finding recorded by the Tribunal that the accident was due to the negligence of the driver of the Tractor-Trailer is in accordance with the evidence placed on record and there is no error in the said finding as such it does not call for interference by this Court; that as the owner and the insurer of the tractor have not been made parties to the claim petition, the Tribunal has rightly dismissed the claim petition; that the documentary evidence placed by the respondent on record and the oral evidence of the driver of the KSRTC bus clearly establishes

that the driver of the Tractor-Trailer drove the vehicle on the wrong side of the road and in spite of the best efforts made by the driver of the KSRTC bus, the bus could not be stopped and ultimately, the bus hit the trailer, therefore, the Tribunal is justified in holding that the accident was solely due to the negligence of the driver of the Tractor-Trailer; that if for any reason this Court holds that there was negligence on the part of the driver of the KSRTC bus also, it is a case of composite negligence in which case both the joint tort-feasors are necessary parties to the claim petition and since the other joint tort-feaser is not impleaded to the claim petition, the matter requires to be remanded to the Tribunal for fresh adjudication so as to give an opportunity to the respondent - KSRTC to seek an appropriate order against the other joint tort-feaser in accordance with the law laid down by this Court in the aforesaid two decisions; that since the Tribunal has not quantified the compensation, even for quantification of the compensation, the matter requires to be remanded.

9. In the light of the submissions made on both sides, following points arise for our consideration in this appeal:

(1) Whether the Tribunal is justified in dismissing the claim petition holding that there was no negligence on the part of the driver of the KSRTC bus and that the accident was solely due to the negligence of the driver of the Tractor Trailer?

If the answer to the above point is in favour of the appellants.

(2) Whether the matter requires to be remanded to the Tribunal? And

(3) Whether the materials available on record are sufficient to quantify the compensation payable, if so, to what amount the claimants are entitled to?

10. As noticed earlier, according to the claimants, the deceased boarded the KSRTC bus to go to Mangalore and at the time of the accident, he was travelling in the KSRTC bus as a passenger. There is no dispute that the accident occurred on account of the collision between the KSRTC bus and the Tractor-Trailer. The Tribunal in this case has proceeded to dismiss the claim petition solely placing reliance on the finding recorded by another Tribunal in a claim petition arising out of the same accident to which the present claimants are not parties. A copy of the said judgment has been produced by the respondent as per Ex.R. 12. In the said judgment, the Tribunal at Mysore by placing reliance on the judgment of the Criminal Court in C.C. No. 1009/2000 filed against the driver of KSRTC bus whereby the driver of the bus was acquitted of the charges levelled against him, has held, that there was no negligence on the part of the KSRTC bus driver. As the present claimants were not parties to the said proceedings, the said judgment could not be accepted as conclusive evidence under the principles of res judicata as per Section 11 of CPC against the claimants to dismiss their claim petition. Therefore, the Tribunal in this case is not justified in placing reliance on the said judgment and on the sole basis of that judgment in dismissing the claim petition. The Tribunal ought to have considered the materials placed on record in this case and ought to have recorded an independent finding on the issue

regarding actionable negligence accordingly.

11. We have perused the oral evidence placed by the parties on record. From the perusal of the same, it is obviously clear that the accident was due to the negligence of the driver of the KSRTC bus if not in its entirety but definitely on account of composite negligence on the part of the drivers of both the vehicles. The respondent KSRTC itself has produced the copy of the sketch of scene of occurrence prepared by the Police during the investigation as per Ex.R.4. As could be seen from the contents of Ex.R.4, the width of the tar road at the place of the accident was 151/2 feet. The road was running from East to West that is from Kushanagar side to Madikerei and the bus was proceeding from East to West. The actual place of collision between the two vehicles as shown in Ex.R.4 was at the distance of 7 1/2 feet from the southern edge of the tar road and at a distance of 8 feet from the northern edge of the tar road. From this it is clear that the actual collision has taken place almost at the center of the road. Though the version of the driver of the KSRTC bus, as could be seen from his evidence was that there was a median just at the place of the accident, the sketch - Ex.R.4 do not support the said version. As per Ex.R-4, there was no road median either before the place of actual collision or after the place of collision. Ex.R-4 further indicates that for about 100 feet prior to the actual collision point there were tyre marks of the KSRTC bus on the road and for about 120 feet after the actual place of collision, the tyre marks of the bus were found to have been continued and the bus was ultimately found parked near a road side tree. This shows that the driver of the bus could not bring the bus to a halt even after seeing the Tractor-Trailer coming from the opposite direction from a distance of 100 feet and even after the collision, the driver could not bring the bus to halt for a further distance of 120 feet and it appears that the bus has come to a stand still only near a road side tree after a distance of 120 feet from the place of actual collision. One thing which is obvious from this state of affairs as indicated in the sketch is that, the KSRTC bus must have been driven at a great speed and the driver of the KSKTC bus was not in control of the vehicle.

12. Ex.R.13 is a rough sketch produced by the respondent - KSRTC. As per this sketch, the road had a curve beyond the place of the accident towards West. The road median ended few meters from the place of the actual collision. From this it is further clear that there was no road median at the place of the accident and that the driver of the KSRTC bus was about to get into the curve whereas the Tractor-Trailer had passed the curve. Even according to the evidence of RW.1, after seeing the oncoming bus, the tractor driver immediately swayed the vehicle to his left side and while the trailer was in the process of following the tractor, the bus hit the trailer. This clearly shows that it is the KSRTC bus which hit the trailer attached to the tractor and not the tractor hitting the bus. There is no dispute that the front portion of the tractor has not come in contact of the bus nor the front portion of the tractor had sustained any damage.

13. Therefore, it is a clear case of the accident being due to the negligence of the

driver of the KSRTC bus if not totally atleast to greater extent. The evidence of RW. 1 that the driver of the tractor drove the vehicle on the wrong side of the median cannot be accepted since the actual collision has taken place beyond the median and since the tractor was found almost on the left side of the road that is on the northern side of the road, it cannot be said that the tractor was proceeding on the wrong side of the road. In any case, even as per the evidence of RW. 1, he saw the Tractor-Trailer coming from opposite direction from a distance of 100 to 150 feet and even according to him he had blown the horn to give the signal to the tractor driver. From the evidence of RW.1, it is clear that it is only after seeing the bus coming from the opposite side, the driver of the Tractor-Trailer swayed the tractor to the left side. At the same time, the driver of the KSRTC bus should have also taken care to bring the bus to a halt and as the KSRTC bus was entering the loop, it was the duty of its driver to have driven the vehicle within a reasonable speed so that the vehicle is under his control and could bring the vehicle to a halt at a shortest notice. However, the manner in which the accident has occurred clearly indicates that the driver of the bus drove the vehicle at a high speed even at a point he was entering the curve and he was not in a position to bring the bus to a halt even after seeing the Tractor-Trailer from a distance of 100 to 150 feet.

14. In the light of the above discussions, we are of the opinion that the accident was due to the negligence of the driver of the KSRTC bus if not to the full extent atleast to the greater extent and therefore, the Tribunal is clearly in error in holding that there was no negligence on the part of the driver of the KSRTC bus. In the Criminal Court, the driver of the KSRTC bus has been acquitted on the basis of the evidence said to have been given by the driver of the Tractor-Trailer. The learned Counsel for the respondent sought to place reliance on the evidence of the driver of the Tractor-Trailer before the Criminal Court, certified copy of which has been marked as Ex.R.7. Reading of the evidence of the said driver of the Tractor-Trailer as per Ex.R.7, in our opinion, do not indicate that there was no negligence on the part of the bus driver. On the other hand the reading of his evidence as a whole would indicate that the accident has occurred beyond the road median and the Tractor-Trailer had passed the curve and had proceeded towards the Northern side of the road. As per the evidence of the investigating Officer before the Criminal Court, a copy of which is marked as Ex.R.11, the actual collision occurred about 25 feet after the road median. It is well settled law that the finding recorded by the Criminal Court is not binding on the Tribunal and the Tribunal has to independently assess the evidence placed before it and record a finding regarding actionable negligence. It is well settled law that the degree of proof before the Criminal Court is beyond reasonable doubt while the degree of proof before the MACT is preponderance of probabilities. Therefore, the Tribunal is not justified in placing reliance either on the judgment of the Criminal Court acquitting the driver of the KSRTC bus or on the finding recorded by another Tribunal in a claim petition arising out of the same accident. Assessment of the evidence placed on record in this case as discussed above clearly

establishes that there was negligence on the part of the driver of the KSRTC bus and his negligence was also responsible for the accident.

15. In Ganesh's case referred to supra, the majority constituting the Full Bench held that in a case of composite negligence, the claimant can proceed against all or any one of the joint tort-feasors and if that joint tort-feaser who is sued contends that the accident was due to the negligence of drivers of both the vehicles, it is open to that joint tort-feaser to take steps to rope in the other joint tort-feaser so that he could claim contribution from the other joint tort-feaser in the event of the claimant recovering the entire compensation from him. This view has been reiterated in another Full Bench decision of this Court in the case of KSRTC v. Arun, referred to supra. In the light of this, there is no substance in the contention of the learned Counsel for the KSRTC that the petition was not maintainable for non-joinder of the necessary parties namely the driver, owner and the insurer of the Tractor-Trailer. In a case of this nature, the claim cannot be rejected on the premise that other joint tort-feaser has not been impleaded as a party.

16. We cannot accede to the request of the KSRTC, to remand the matter to enable the Corporation to take steps to rope in the other tort-feaser or if not, at least liberty be reserved to the Corporation to approach the appropriate forum in this regard. This argument is totally hypothetical as the other joint tort-feaser is not a party to the proceedings and the Corporation being one of the joint tort-feasers having not taken steps to implead the other joint tort-feaser, it is not open for this Court to proceed on ifs and buts. In view of the above discussion, we hold that the Tribunal is not justified in dismissing the claim petition. Accordingly we answer

17. The claimants have produced the evidence that the deceased was working as a clerk in Vysya Bank and was drawing a monthly salary of Rs. 11,305/-. They have also produced cumulative record as per Ex.P.8, which shows his age as on the date of the accident as 46 years. In our opinion, the evidence available on record is sufficient for this Court to quantify the compensation payable to the claimants on the well settled principles of law laid down in several decisions of the Apex Court and this Court. Therefore, there is no reason for remanding the matter only for the purpose of quantification.

18. Ex.P.5 is the salary certificate of the deceased according to which the deceased was drawing a gross salary of Rs. 11,305/-. As per Ex.P.8, the date of the birth of the deceased was 22.4.1954. The accident occurred on 7.2.2000. Therefore, the deceased had completed 46 years and was running 47th year of his age. In Sarla Verma's case referred to supra, the Apex Court while considering the question as to whether the additional income for the purpose of future prospect should be taken, has held that "where the deceased had permanent job and was between 40 to 50 years, 30% of the actual salary less the tax should be added for future prospect". In the case on hand, the deceased was an employee of Vysya Bank and therefore he had a permanent job and was

aged 46 years as such had another 14 years of service left. In this view of the matter, 30% of his last drawn salary should be added towards future prospect and on that basis, the loss of dependency is required to be quantified. By taking the monthly gross salary of deceased as Rs. 11,305/-, 30% of the same works out to Rs. 3391/-. Thus the total probable income of the deceased works out to Rs. 14,696/-. As per Ex.P.5-salary certificate a sum of Rs. 1,000/- was being deducted towards income tax and Rs. 100/- towards professional tax. If the said tax liability is deducted, the balance works out to Rs. 13,596/-. As the deceased has left behind his wife and two children, in all 3 dependents, it is reasonable to deduct 1/3rd of the income of the deceased towards his personal expenses and the remaining 2/3rd as contribution to the family. Thus the monthly loss of dependency works out to Rs. 9,064/-. Having regard to the age of the deceased, the appropriate multiplier applicable is "13". On this basis, the total loss of dependency works out to Rs. 14,13,984/- [Rs. 9,064/- x 12 x 13].

19. Therefore, the claimants are entitled to Rs. 14,13,984/- towards loss of dependency. In addition to this, the first claimant is entitled for a sum of Rs. 10,000/- towards loss of consortium, claimants 2 and 3 are entitled for a sum of Rs. 10,000/- each towards loss of love and affection; a sum of Rs. 10,000/- towards loss of estate and a sum of Rs. 10,000/- towards transportation of dead body and funeral expenses. Thus, the claimants are entitled to total compensation of Rs. 14,63,984/- which is rounded off to Rs. 14,64,000/-.

20. Accordingly, the appeal is allowed. The judgment and award dated 5.9.2008 passed by the Additional Civil Judge (Sr. Dn.) and MACT, Tumkur in MVC. No. 745/2000, dismissing the claim petition is set aside. The claim petition is allowed in part, awarding compensation of Rs. 14,64,000/- with interest at 6% per annum from the date of petition till the date of payment. The respondent - KSRTC is directed to pay the compensation amount with interest after deducting interim compensation if any already paid, within 6 weeks from today.

Out of the compensation amount, we award 50% of the same to the first claimant and 25% each in favour of claimants 2 and 3. Out of the compensation amount payable to the first claimant, 50% of the same with proportionate interest shall be kept in Fixed Deposit in her name in any nationalised or scheduled Bank of her choice for 5 years with liberty to her to withdraw the periodical interest quarterly.

Out of the compensation payable to claimants 2 and 3, 50% of the compensation amount with proportionate interest shall be kept in Fixed Deposit in their name in any nationalised or schedule Bank of their choice for 5 years, with liberty to them to withdraw the periodical interest quarterly.

The Award be drawn accordingly.