

(2013) 06 KAR CK 0142
In the Karnataka High Court
Case No : M.F.A. No. 4212 of 2011 (MV)

Smt. Manjula @ Manjamma and Others	APPELLANT
Vs	
Sri Srinivas, The Managing Director, BMTC and United India Insurance Company Ltd.	RESPONDENT

Date of Decision : 18-06-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 304, 34

Citation : (2014) ACJ 1769 : (2013) 3 AKR 677 : (2013) ILR (Kar) 3871 : (2013) 6 KarLJ 154

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : N. Gopalkrishna, for the Appellant; R. Rajagopalan, Advocate for R3 and Sriyuths R. Swamy and K.V. Ravi, Advocates for R1, for the Respondent

Final Decision : Allowed

Judgement

N. Ananda, J.—The Tribunal has dismissed claim petition. Therefore, claimants are before this court. I have heard Sri N. Gopalkrishna, learned counsel for claimants and Sri R. Rajagopalan, learned counsel for Insurance Company.

2. The claimants are the wife, children and mother of deceased Shivaiah, who according to claimants died in a motor vehicle accident that took place at about 9.15 p.m. on 24.12.2008 near traffic signal junction of 46th Cross, 11th Main Road, V Block, Jayanagar, Bangalore.

3. The facts leading to the death of Shivaiah are rather unusual. The claimants, as also Insurance Company have relied on investigation records and final report filed against I-respondent and one Govindappa, (accused No. 2 in C.C. No. 13695/2009). The deceased was the driver of a Omni bus bearing No. KA-01-B-4522 of MTR Food Products. At the relevant time and place, the deceased had stopped bus to pick up passengers, who were waiting near BMTC bus stop. At that time, driver of BMTC bus overtook bus of deceased and stopped by the side

of Omni bus and picked up quarrel with deceased for unauthorisedly picking up passengers from bus stop and making unlawful gain. The driver of BMTC bus dragged the deceased from bus bearing No. KA-01-B-4522 and felled him on road. The driver of BMTC bus abruptly started off bus, without noticing that deceased had fallen near wheels of BMTC bus and ran over BMTC bus on deceased and caused his death. On the basis of first information lodged by one K. Muralidhara (an employee of MTR Food Products), crime was registered against driver of BMTC bus and another employee of BMTC for an offence punishable u/s 304 r/w 34 IPC. After investigation, final report was also filed.

4. The post-mortem examination report of deceased would reveal that his death was due to shock and haemorrhage as a result of injuries sustained by the deceased. The post-mortem examination report would reveal that deceased had suffered following injuries:-

I. Tyre mark over left side front of chest and upper part of abdomen measuring 36 cms x 28 cms.

II. Abrasion over upper part of left forearm and arm 38 cms x 12 cms on posterior aspect

III. Abrasion over front of upper part of left forearm and arm 30 cms x 6 cms

IV. Multiple small abrasions over front of left knee

5. It is not in dispute and cannot be disputed that deceased was run over by BMTC bus bearing No. KA-01/F-2546.

6. Sri R. Rajagopalan, learned counsel for Insurance Company would submit that death of deceased was not accidental, it was homicidal, therefore Insurance Company is not liable to pay compensation.

7. Sri N. Gopalkrishna, learned counsel for claimants, relying on the judgment of High Court of Madhya Pradesh, Indore Bench, reported in Kacharmal Kishanlal Mahajan and Another Vs. Chainram Kishanlal Mahajan and Another, would submit that death of deceased Shivaiah was caused due to use of motor vehicle on public road. The intention behind running over bus on deceased is immaterial for decision of claim under the Motor Vehicles Act.

8. In the aforesaid judgment, the High Court of Madhya Pradesh has held that criminal intent to cause wrongful loss or damage to injured party does not affect tortious content of the act of mischief. In spite of the element of criminal intent involved in the offence of mischief, the act of mischief is necessarily rash and reckless act of tort.

9. In order to appreciate the rival contentions of parties, it is necessary to refer to the provisions of section 165(1) of the Motor Vehicles Act, 1988 (for short, "the Act").

10. Section 165(1) of the Act, defines "Claims Tribunals", which reads thus:-

165. Claims Tribunals- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter referred to as Claims Tribunal) 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 use of motor vehicles, or damages to any property of a third party so arising, or both.

(underlining supplied by me)

11. u/s 165 of the Act, Tribunals are constituted to adjudicate 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.

The intention of user of motor vehicle is not relevant to decide a claim petition filed u/s 166 of the Act.

It is needless to state that Motor Vehicles Act is a species of law of torts enacted to provide compensation to injured/victims of tortious liability, arising out of use of motor vehicle. The tort is a civil wrong independent of contract. The facts producing it may or may not also constitute an offence punishable by public authority. The same set of circumstances will, in fact, from one point of view, constitute a tort, while, from another point of view, amount to a crime.

12. The learned counsel for Insurance Company would submit that in the absence of proof of rash and negligent act, Insurance Company cannot be called upon to satisfy liability though such liability had arisen by user of motor vehicle on public road.

13. In my considered opinion, this submission is not tenable. An act may be a tort or a crime. An act may give rise to civil or criminal liability. If tort is made punishable under penal code, it does not absolve tort-feasors of their liability under common law. In order to claim damages u/s 166 of the Act, it is not necessary to prove that there was no criminal intent behind user of motor vehicle.

14. The learned Judge of Tribunal without noticing distinction between proceedings u/s 166 of the Act and proceedings before criminal court has erroneously held that findings recorded by Tribunal may interfere with criminal trial pending against accused. The proceedings u/s 166 of the Act are summary proceedings. The findings recorded by Tribunal are not binding on criminal court.

15. In a decision reported in N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, the Supreme Court has held:-

3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of *res ipsa loquitur*. Accidents Tribunals must take special care to see that innocent victims not suffer and

drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes....

16. It is established from evidence on record that deceased was run over by BMTC bus bearing No. KA-01/F-2546 when driver of BMTC bus abruptly started off bus, without noticing that deceased had fallen in front of BMTC bus.

17. It is borne from evidence on record that driver of BMTC bus had picked up quarrel with deceased for picking up passengers from bus stop. In the circumstances, driver of BMTC bus before starting off BMTC bus should have ensured that entire melee was over and persons, who were quarreling had retreated. The Tribunal without considering all these aspects has erroneously held that claimants cannot maintain claim petition u/s 166 of the Act, claiming compensation for death of deceased Shivaiah, which according to investigation records was homicidal death not amounting to murder. The Tribunal has failed to notice that even in homicidal death, besides criminal intent, there is an element of rashness and negligence. In any event, whether driver of BMTC bus had necessary mens rea to cause death, if so, what was the degree of criminal intent are matters for consideration before criminal court.

The driver of bus (I-respondent) as also registered owner of bus (II-respondent) have been placed ex parte. Therefore, they have failed to establish before Tribunal that I-respondent had driven bus and ran over bus on deceased with intention of causing death of deceased. On the other hand, Insurance Company, relying on investigation records has contended that Tribunal has no jurisdiction to entertain the claim petition on the premise that criminal case was registered against driver of bus under sections 304 r/w 34 IPC. The intention behind running over bus on deceased was within the exclusive knowledge of I-respondent. In the circumstances, Insurance Company should have examined I-respondent to prove that he had run over bus with intention of causing his death.

18. In the circumstances, the apprehension of Tribunal that if it were to record a finding on the nature of death of deceased Shivaiah, that would interfere with trial pending against accused in C.C. No. 13695/2009 for offences punishable under sections 304 r/w 34 IPC is erroneous.

19. From the evidence on record, it is established that death of deceased Shivaiah had occurred when he was run over by BMTC bus near place of accident. The driver of BMTC bus is guilty of rash and negligent driving. If it is established before criminal court that he had other intentions and the act was not merely rash and negligent act, the driver of BMTC bus would face the consequences. The Tribunal having answered issue No. 2 in negative has not answered other issues. Therefore, the matter requires reconsideration by the Tribunal to answer other issues framed by it. The Tribunal has to quantify compensation and determine liability of respondents to pay compensation.

Therefore, I pass the following:-

ORDER

The appeal is accepted. The impugned award is modified. The finding recorded by Tribunal on issue No. 2 is set aside. It is held that driver of BMTC bus bearing No. KA-01/F-2546, drove the bus in a rash and negligent manner, ran over BMTC bus on deceased and caused his death. The matter is remanded to Tribunal to quantify compensation and to determine liability of respondents to pay compensation. Parties are at liberty to adduce further evidence. It is made clear that observations made in this judgment are not binding on sessions case if any pending against driver of BMTC bus and accused No. 2 namely Govindappa in final report (C.C. No. 13695/2009).