

(2014) 12 KAR CK 0203

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 22713 of 2009 [MV]

The Divisional Controller, KSRTC

APPELLANT

Vs

Somanath

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2014) 12 KAR CK 0203

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : F.S. Dabali, Advocate for the Appellant; Chandrashekar P. Patil, Advocate for the Respondent

Judgement

K.N. Phaneendra, J.—The respondent No. 2/the Divisional Controller, KSRTC, Bellary Division, in MVC No. 23/2005, on the file of the Civil Judge (Sr. Dn.), MACT, Gangavati, preferred this appeal against the judgment and award passed in the said case on several grounds.

2. The respondent is represented Sri. Chandrashekar P. Patil. The appellant has challenged the judgment and award passed by the trial court on two grounds, namely:

(a) The Tribunal is not justified in holding that the driver of the bus was negligent and grossly erred in applying the principle "res ipsa loquitur" without considering the manner of accident and evidence of RW-1/driver of the bus.

(b) It is further contended that the claimants who were travelling in a bicycle though themselves fell down and sustained injuries due to their own carelessness and negligence?

(c) The Tribunal is not justified in awarding compensation by relying upon Ex. P.4/ wound certificate issued by the doctor, believing the sole document, without any other material on record.

The document/Ex. R-1 produced before the Court clearly discloses that claimant and other injured were not treated in the Government Hospital at Gangavati on 11.12.2004. Therefore, the trial court has committed serious error in relying upon these documents. It is further contended that the quantum of compensation awarded by the Tribunal is exorbitant and the same is also liable to be interfered with by this Court.

3. I have heard the learned counsel for the appellant as well as the respondent.

4. Though, it is contended that the accident in question has not happened due to the negligence on the part of the driver of the bus, but at the time of arguments before the Court, such ground has been given up. Therefore, there is no need for this Court to delve upon the said point in detail.

5. However, for the sake of satisfying myself, I carefully gone through the material on record. The records disclose that immediately after the accident, a complaint came to be lodged against the driver of the bus bearing its registration No. KA-38/F-255 of Hospet Depot and the police have registered a case in Crime No. 186/2004. Consequently, after investigation the charge-sheet has been laid against the driver of the said bus, who faced the prosecution. Therefore, contrary to this, though the evidence let-in by the driver of the said bus, examined himself as PW-1, who in a negative manner, deposed that no such accident has taken place and he was not root cause for any accident as such. It is the specific contention taken by respondent No. 1/Mohammed (driver of the said bus) at paragraph 4 of the deposition that, on the date of accident, the petitioner along with one Mallappa were going on the bicycle and due to imbalance, both the petitioner and Mallappa fell down on the road, due to which the injuries were caused and not due to the involvement of his bus. The petitioner in order to get compensation has filed a false case against him and the Department.

6. In order to support this particular contention, nothing has been produced by him before the Court and he has not filed any complaint before the police making such allegations against the complainant or any other person with regard to the false implication of the driver in the criminal case nor he has filed any complaint making allegations that due to the negligent riding of the bicycle by the claimant, the said accident has happened. Therefore, such evidence of RW-1 is bereft of corroboration. On the other hand, charge-sheet has been laid against that particular driver after due investigation, which is fully supported by the charge-sheet papers placed before the Court. Therefore, I am of the opinion that the said ground taken by the appellant falls to the ground, and the accident and negligence of the driver of the bus have been established by means of these documents and also the evidence of claimant herein.

7. So far as the negligence aspect is concerned, the claimant himself has deposed before the Court that he sustained injuries due to the accident occurred on account of rash and negligent driving of the vehicle by the driver of the bus. On perusal of the evidence, it can be seen that except putting a suggestion that

due to his negligence in riding the bicycle they sustained injuries, that suggestion has been denied.

8. The next contention taken up by the learned counsel is that the Court below has committed a serious error in relying upon Ex. P-4 alone which is the wound certificate issued by the Doctor of the Government Hospital, Gangavati.

9. I have carefully perused the documents produced before this Court and the evidence of the injured. The injured was examined as PW-1 and he has categorically stated that on the particular day, immediately after the accident, he sustained severe injuries viz., fracture to his left shoulder and left thigh bone and also abrasions all over the body. He was admitted to the hospital by some persons particularly to Gangavati Government Hospital and he categorically stated that the Police have recorded his statement in the hospital itself. This particular portion appears to have not been seriously contested during the course of cross-examination.

10. The learned counsel for the appellant strenuously contends that the doctor who issued the wound certificate/Ex. P-4 has also issued another document, which is marked at Ex. R-1. Ex. R-1 bears the signature of the same doctor. In fact, the doctor examined before the Court as PW. 2 deposes to the effect that he has issued Ex. P-4/wound certificate in favour of the claimant/petitioner and he also issued the document marked at Ex. R-1. Ex. P-4 discloses that on 11.12.2004 at 11.30 a.m. the injured Somanath was admitted to the Hospital and he suffered pain and swelling over the left shoulder and swelling and tenderness over the upper part of the left thigh and there was X-ray report showing a fracture of clavicle and fracture of upper 1/3rd femur and the above said two injuries are grievous in nature.

Ex. R-1 runs totally counter to this document. In Ex. R-1, the same doctor has issued an information to the Divisional Security Inspector, NEKRTC, Bellary Division, wherein he has stated that on 11.12.2004, none of the persons by name Somanath, Ramanna and Mallappa were admitted to the Government Hospital, Gangavati, either as inpatients or outpatients. It is very strange to accept this document, as there is no reason as to how this doctor can issue such totally different documents with respect to the same persons. Therefore, the Court has to see which document has to be believed by the Court and which document has to be disbelieved.

It is a fundamental principle of criminal jurisprudence that a particular fact in issue or relevant fact is to be proved by the person who raises that particular issue by means of satisfactory evidence before the Court. In this particular case, it is not a criminal case, but it is a civil case, particularly, motor vehicle case wherein, the claimants are supposed to prove the case by preponderance of probability. It is not incumbent upon them to prove their case beyond all reasonable doubt, as it is necessary in criminal cases.

So far as this particular document Ex. R-1 is concerned, Ex. R-1 and the

statement of doctor/PW-2 are not corroborated by any other material on record. On the other hand, Ex. P-4, contains the injuries suffered by the claimant. It is categorically stated by the claimant himself in his evidence that even prior to going to Hospital, he has suffered such grievous injuries to his body and he has stated that some persons have shifted him to the Hospital. This particular aspect is also supported by Exs. P-6 & 7/certified copy of the charge-sheets marked before the trial court, wherein one Mr. Ramanna who also suffered some injuries in the same accident, lodges the FIR on 11.12.2004 itself. The police have registered a case under Sections 279, 337 and 338 of I.P.C. He has categorically stated that he suffered injuries in the accident but at a different place. He also mentioned that the same driver of the bus has also caused the accident to the claimant in this particular case and the other claimants also suffered some injuries. The said Ramanna has given a statement before the Police. The FIR plays a decisive role in this case, in which it is categorically stated that the police have actually visited the Government Hospital at Gangavati on the basis of the information issued by the doctor registered it as a medico-legal case. Thereafter, the police visited the Hospital at 8.00 a.m. and recorded the statement of Mr. Ramanna and registered the case in Crime No. 186/2004 for the above said offences.

The evidence of the claimant in this case is fully corroborated by these two documents wherein he has also stated that on that particular date, police have visited the Government Hospital and recorded his statement.

11. Ex. P-6 is the charge-sheet which shows that the police, during the course of investigation, recorded the statement of injured persons. The statement of CW-4, who is the claimant herein by name Somanath, clearly establishes that the statement of the injured persons were recorded by the police in the Hospital. Therefore, the portion of the evidence of the doctor with reference to the issuance of the injury certificate in favour of the claimant is fully supported by other materials on record. But, as I have stated that document Ex. R.1 is not supported by any other materials on record, except the admission on the part of the doctor. Therefore, I am of the opinion that the contents of Ex. P-4/wound certificate cannot be easily brushed aside merely because the X-ray report and other materials in connection with the treatment, are not produced before the Court. The doctor, who was summoned to the Court, not at all produced any documents. For non-production of such documents by the doctor, the claimant should not be penalised. Therefore, I am of the opinion that the contents of Ex. P-4/wound certificate which is marked through the person who has actually treated the claimant and issued such document cannot be disbelieved, which clearly shows that there was a swelling of fracture of left clavicle and swelling tenderness of the thigh resulted in fracture of upper 1/3rd of the left femur. In view of the above said my finding, I fail to understand the arguments of learned counsel for the appellant that the trial court has committed serious error in relying upon Ex. P-4.

12. Now, coming to the quantum of compensation awarded by the trial court, the trial court has awarded an amount of Rs. 30,000/- towards the pain and suffering insofar as two fractures are concerned and loss of earnings during medical treatment at Rs. 6,000/- calculating it as Rs. 3,000/- per month; towards medical expenses only a meager amount of Rs. 3,000/- was awarded; loss of future earnings was also awarded taking the income of the claimant at the rate of Rs. 3,000/- per month which is also, in my opinion, not exorbitant; conveyance and nourishment charges awarded by the trial court is only Rs. 3,000/-. Even looking to the quantum of compensation, I do not find any exorbitant and abnormal amount has been awarded by the Tribunal. Hence, I do not find any error in the reasoning to interfere with the judgment and award passed by the trial court.

13. Before parting with the judgment, I find serious lapse on the part of the doctor in issuing two contradictory documents viz., Ex. P-4 and Ex. R-1. On a plain reading of the evidence of doctor/PW-2, in the course of cross-examination, he has categorically admitted the issuance of Ex. P-4 and also the disability certificate, which is marked as Ex. P-8. Of course, Ex. P-4 discloses that there is injury to the left thigh and fracture of femur of the left leg of the claimant. The doctor has admitted that he has issued the letter of intimation regarding not providing treatment to the petitioner. It is also admitted by him that he has issued an endorsement to the said effect, which is marked as Ex. R-1. But, he has not given any explanation as to how he could issue such two counter blast documents in respect of the same claimant. Though, I have held that the injury certificate is supported by other materials, it will not absolve the negligent act on the part of the doctor in issuing such certificate Ex. R.1.

The doctors have got more care and responsibility towards the claimants as well as towards the insurance company, who has to pay the compensation. They have to be very diligent in treating the patients and issuing certificates. They should be very careful because the doctors are Class-II officers (in this case, a Government doctor). They must take utmost care in discharging their duties, particularly as life saving doctors. Therefore, in this particular case, I find that there is serious lapse on the part of the doctor in issuing such a document, Ex. R-1.

14. In Ex. R-1, as I have already narrated that Doctor has stated that the persons who are injured were not admitted to the hospital and treated either as inpatients or outpatients. In that event, how he could issue the wound certificate as well as disability certificate is not explained by the doctor. More over, apart from the above, Ex. P-8, which is the disability certificate, discloses that the same Dr. Ramakrishna H. has certified on clinical examination of the claimant, that the claimant has got the following:

- 5) "Limps while walking on the right side of the body;
- 6) Right limb measures of about 84 cm.

- 7) Left limb measures of about 86 cm.
- 8) Right limb is shortened by 2 cm.
- 9) R-thigh measures of about 44 cm.
- 10) L-thigh measures of about 46 cm.
- 11) Girth of the left thigh is reduced by 2 cm."

15. Having given such description, with regard to shortening of the right limb by 2 cm., he gives a disability certificate that the left thigh has suffered disability to an extent of 24-28%. It also shows the callous nature of work by the doctor and he is totally unmindful of realities in the case, perhaps he has issued this certificate without proper application of mind. Nevertheless, this cannot disentitle the claimant from claiming compensation, because he has given evidence before the Court below supported by other materials that he has actually suffered fracture of his left femur. Therefore, I am of the considered opinion that the conduct of the doctor in this particular case is not proper and upto the mark. Therefore, in my opinion, the competent authorities have to take appropriate action in this regard. Hence, I would like to send a copy of this order to the Karnataka Medical Council and Principal Secretary to the Government of Karnataka, Health Department, in order to go through the entire material on record so far as this case is concerned and take appropriate action in accordance with law against this doctor.

In view of my reasoning, the appeal fails and the same is liable to be dismissed. Accordingly, the appeal is dismissed.

The Registry is hereby directed to send a copy of this order to the President, Karnataka Medical Council, #70, 2nd Floor, "Vaidyakeeya Bhavana" K.R. Road, H.B. Samaja Road Corner, Basavanagudi, Bangalore-560004 and to the Principal Secretary to the Government, Department of Medical Education, State of Karnataka, Bangalore-560001, in order to take appropriate action as observed by this Court.

The amount in deposit is ordered to be transmitted to the Tribunal for disbursement in accordance with law.