

(2014) 11 KAR CK 0229

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 22684/2009 (MV)

The Divisional Manager, NWKRTC

APPELLANT

Vs

Yallawwa

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2014) 11 KAR CK 0229

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

Bench : Single Bench

Advocate : Shivakumar S. Badawadagi, Advocate for the Appellant

Judgement

K.N. Phaneendra, J.—The appellant - NWKRTC has preferred this appeal challenging the judgment and award passed by the Motor vehicle Accident Claims Tribunal-III, Bagalkot in fastening the liability on it, vide its judgment dated 27.05.2009 in MVC No. 330/2008.

2. The appellant has challenged the above said judgment and award on the ground that the accident was not only due to the negligence on the part of the appellant's bus driver, but there were other two vehicles involved in the accident i.e., the lorry bearing its registration No. KA-19/AE-7767 and Tata Sumo bearing its registration No. KA-30/1197 which were also coming on the same road and hit the NWKRTC bus from behind, which was being driven by its the driver. It is contended that, though this contention is taken before the trial Court, the trial Court has committed a serious error in not taking into consideration this plea of the appellant and also not framing any issue to that effect and in fact strayed away by the evidence of the claimant and other witnesses and appeal documents and fastened the entire liability on the appellant, which is erroneous in nature. Therefore, considering the contributory negligence on other two vehicles, the trial Court ought to have directed the claimants to implead the owner and Insurance Company of those vehicles in order to ascertain whether there was any contributory negligence on the part of those vehicles in order to adjudicate

the rights of the parties in proper manner and apportion the liability in accordance with law. Hence on the same ground, the appellant has approached this Court.

3. I have heard the arguments of the learned Counsel for the appellant Sri. Shivakumar Badawadagi and perused the records.

4. The records disclose that the claimant by name Yallamma and others have filed the claim petition claiming compensation for the death of the deceased Ramappa who died in the motor vehicle accident occurred on 12.04.2008. The allegation made in the claim petition is that, on that particular day, the said Ramanna (Ramappa) along with his family members was travelling from Mangalore to Ilkal in the bus belonging to NWKRTC-appellant herein bearing its registration No. KA-29/F-848 and when the bus reached near Alvekodi village on NH-17 running between Kumata and Honnavar, the driver of the bus drew the vehicle in rash and negligent manner in a high speed and dashed against the lorry coming from the opposite direction bearing its registration No. KA-19/AE-7767 and due to the impact of the accident, the said Ramappa succumbed to the injuries.

5. The appellant herein, as a respondent before the trial Court made its appearance and filed its return statement. As could be seen from written statement, they have taken up the contention that the lorry bearing registration No. KA-19/AE-7767 on the date of the accident was coming from the opposite direction in which the bus was moving and due to the rash and negligent driving of the said lorry by its driver, it collided with the bus and therefore, the said driver of the lorry was also responsible for the accident and in fact, due to his negligence the accident happened. In this context, the driver of the bus Naganagouda Bapugouda Nadagouda was also examined before the trial Court as RW1 in order to substantiate the contention taken up in the written statement.

6. The records disclose that, immediately after the accident, a complaint came to be lodged by the one Basavaraj, S/o. Maruti Kakanur and the police have registered the case in Crime No. 60/2008 on 12.04.2008 against the driver of the bus for the offences punishable under Section 279, 337, 338 and 304A of the IPC. It is also an admitted fact that, subsequently, the police have already filed charge sheet against the said driver and the driver was arrested and subsequently released on bail. Though this contention was taken up by the NWKRTC only at the time of filing of the written statement before the trial Court, but it appears no effort has been made either by the driver of the said vehicle or by any of the eyewitnesses to lodge any complaint against the driver of the lorry or the driver of the Tata Sumo vehicle alleged to have been involved in the accident.

7. In order substantiate his contention, the learned Counsel Shivakumar Badawadagi drawn my attention to the evidence of PW2 - Chandalingouda Channabasanagouda Goudar and contended that, in the cross-examination

portion of this witness, he has admitted to certain extent that the driver of the lorry was also driving the vehicle in rash and negligent manner. Therefore, the contention taken up by the driver of the bus, i.e., RW1 is also substantiated or corroborated by the evidence of PW2.

8. On perusal of the evidence of PW2 in the examination-in-chief, nothing has been stated by him with regard to the involvement of lorry bearing registration No. KA-19/AE-7767. Nothing has been stated about any rashness or negligent driving of the said lorry by the driver of the said lorry. But he has categorically stated about the rashness and negligence of the driving of the bus by its driver i.e., RW1. In the course of cross-examination, of course some suggestions have been made. It is admitted by this witness that, at the time of the accident, a lorry was coming from the opposite side and a lorry driver was also driving the vehicle in a high speed and because of that reason, the bus driver has taken the vehicle to the left side of the road and therefore, the lorry driver came in a rash and negligent manner and dashed against the bus. To such suggestions being made, all these witnesses except accepting that the lorry was coming from the opposite direction being driven in speed by the lorry driver, all other suggestions have been denied as false.

9. Therefore, it is not clear from the evidence of these witnesses, even by means of preponderance of probabilities, that the lorry driver has also contributed his negligence in causing the accident. The driver of the bus has been examined, but he has not substantiated as to why he did not go to the police station immediately after the accident and lodge any complaint against the lorry driver or against the driver of the said Tata Sumo vehicle. When he was produced before the Court, it appears nothing has been explained by him except informing the Court that he was not responsible for the accident, but the driver of the lorry was responsible for the accident. In the evidence itself, he has categorically stated that he was not negligent and he was not driving the bus in a rash and negligent manner, but on the other hand, he wanted to fasten the entire responsibility on the driver of the lorry, which in my opinion, is not proper and correct.

10. Under the above said circumstances, when there are no materials available to the Court that soon after the accident, some truth has been revealed by the driver of the bus in order to implicate the driver of the lorry, but at the belated stage, when he appeared before the Court, he has deposed before the Court implicating the driver of the lorry as one of the person who contributed negligence to the accident, which in my opinion is not fair enough on the part of the bus driver. Even coming to the written statement filed by the respondent herein, they knew that the case has been registered against the bus driver at the initial stage on the date of the accident itself i.e, on 12.04.2008, but in spite of coming to know about that, the appellant, if it were to be a very diligent institution, it would have definitely taken action against the lorry driver and driver of Tata Sumo by making necessary complaint against those persons.

Having not done such acts diligently immediately after the accident, in my opinion, by mere taking of the defence before the trial Court in the written statement would not suffice the discharge of their responsibilities.

11. In the above said circumstances, I do not find any strong reasons to differ from the opinion expressed by the trial Court. The trial Court has rightly considered the evidence of the claimants, PW1 and other witnesses in detail and after perusal of the police papers, with all certainty, has come to the conclusion that the driver of the bus is solely responsible for the accident and therefore, the trial Court has rightly fastened the liability on the appellant. Therefore, the said judgment does not call for any interference. Accordingly, I hold that the judgment and award passed by the trial Court is in accordance with law and material facts on records. Hence the appeal deserves to be dismissed.

Accordingly the appeal is dismissed. Office is directed to send back the records forthwith along with the amount in deposit for disbursement in accordance with law.