

(1980) 06 KAR CK 0027

In the Karnataka High Court

Case No : Misc. First Appeal No's. 14 and 15 of 1979

The General Manager, Karnataka State Road Transport
Corporation, Bangalore

APPELLANT

Vs

Krishnan and Others

RESPONDENT

Date of Decision : 16-06-1980

Acts Referred:

Citation : (1981) ACJ 273 : AIR 1981 Kar 11

Hon'ble Judges : G.N. Sabhahit, J; D.R. Vithal Rao, J

Bench : Division Bench

Advocate : N.P. Moganna, P. Subba Rao, R.V. Vasantha Kumar and B.K. Venkata Krishna, for the Appellant;

Judgement

Vithal Rao, J.—These two appeals by the Karnataka State Road Transport Corporation are directed against the common judgment and awards dated 7-9-1978, passed by the Member, Motor Accidents Claims Tribunal, Kolar, in Miscellaneous Cases (M. V. C.) Nos. 40 and 39 of 1976, on his file, awarding compensation in a sum of Rs. 70,000/- to the claimant/injured in Miscellaneous Case (MVC) No. 40 of 1976 and Rupees 57,000/- to the claimant/injured in miscellaneous Case (MVC) No. 39 of 1976.

2. The facts, briefly stated, are as follows: At about 4.00 P. M. on 15-6-1976 the claimants were travelling in the bus bearing Registration No. KLV 5913 belonging to original respondent-1 driven by original respondent-2 along Madras Bangalore road on their way to Bangalore. The bus bearing Registration No. MYK 5699 belonging to the Karnataka State Road Transport Corporation (original respondent-4) driven by respondent-5 came from Bangalore and there was a collision between the two buses near Kukri Tank near Narasapur village. Consequently, both the claimants sustained injuries to their left hands. The claimants further stated that they were working as Spinners and Winders in the Madura Coats Limited, Tuticorin, and that the claimant in Miscellaneous Case (MVC) No. 39 of 1976 was getting a salary of Rs. 440/- per month and the

claimant in Miscellaneous Case (MVC) No. 40, of 1976, was getting a salary of Rs. 475/- per month. The claimant in M. C. (MVC) No. 39 of 1976, claimed compensation of Rupees 1,00,000/- for the loss of his left hand and for the loss of his earning capacity. So also, the claimant in M. C. (MVC) No. 40 of 1976 claimed compensation of Rs. 1,00,000/- for the loss of his left hand and for the loss of his earning capacity.

3. The original respondents, by filing their objections, denied their individual liability for making the payment of compensation to the claimants, throwing the blame on the other vehicle.

4. On the basis of the pleadings of the parties, the Tribunal raised the following common issues in both the cases.

(1) Whether the accident was due to the rash and negligent driving by respondent-2 or respondent-5 or both?

(2) Whether the injuries sustained by the petitioners were on account of their negligence in keeping their hands outside the bus at the time of the accident?

(3) Whether the petitioners are entitled to any compensation and, if so, how much and from whom?

(4) Whether original respondent-3 is not liable for payment of compensation?

(5) What order?

5. During hearing, common evidence was recorded and the claimants examined PWs. 1 to 6 including the claimants in both the cases as PWs. 4 and 5 and they got marked Exhibits P-1 to P-15. The respondents examined 2 witnesses including the driver of the Karnataka State Road Transport Corporation as DW 2.

6. The Tribunal appreciating the material on record, held that the accident was the result of actionable negligence on the part of the driver of both the vehicles and, consequently, it awarded compensation in a sum of Rs. 70,000/- to the claimant in M. C. (MVC) No.40 of 1976 and Rs. 57,000/- to the claimant in M, C. (MVC) No. 39 of 1976. The Tribunal has apportioned the liability between the bus belonging to the Karnataka State Road Transport Corporation and the tourist bus in the proportion of 40:60. Aggrieved by the said common judgment and awards, the Karnataka State Road Transport corporation has filed these two appeals.

7. The learned Counsel for the appellant argued that the finding of the Tribunal holding that the accident was the result of the actionable negligence on the part of both the drivers of the vehicles was not justified and, in the alternative, he submitted that the compensation awarded by the Tribunal was exorbitant and excessive. According to him, the apportionment of liability was not correct as there was no negligence on the part of the driver of the Karnataka State Road Transport Corporation.

8. The learned Counsel for the respondents/claimants argued that since it was a

case of composite negligence, the Tribunal was not justified in apportioning the liability.

9. The points, therefore, that arise for our consideration in these two, appeals are.

(1) Whether the Tribunal was justified in holding that the accident was the result of the rash and negligent driving of both the vehicles by the respective drivers?

(2) If so, whether the quantum of compensation awarded in the two cases are just and proper?

(3) Whether the Tribunal was justified in apportioning the, liability of payment of compensation in the proportion of 40:60?

10. It is not in dispute that both the vehicles brushed each other as a result of which the left hands of both the claimants (passengers) have been cut off below the shoulder joint. That itself speaks volumes for the negligence on the part of the drivers of both the vehicles. In view of this fact, the doctrine of *res ipsa loquitur* comes into operation. In the absence of any satisfactory explanation on behalf of the drivers of both the vehicles, we have no reason to differ with the finding of the Tribunal holding that the drivers of both vehicles were responsible in causing the accident.

11. So far as the passengers travelling in the bus are concerned, it becomes a case of composite negligence on the part of both drivers in causing the accident.

12. In the case of *Mrs. Hira Devi Vs. Smt. Bhaba Kanti Das and Others etc. etc.*, the High Court of Assam at Gauhati has held, relying on a decision in the case of *Manjula Devi v. Manjusri Raha* (1968 ACC C. J. 1) High Court of Madhya Pradesh, in similar circumstances, when a bus and a car dashed against each other and when the Tribunal found that both the drivers were rash and negligent, that it was a case of joint tortfeasors and that the Tribunal was in error in apportioning the liability.

Further, the High Court has observed as follows:

"A case of contributory negligence arises only where there was an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may be properly described as negligence and that in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise".

13. Therefore, in the present cases as well, there is no question of the victims contributing in any way to the cause of the accident. The present cases are clearly cases of composite negligence. Hence, both the drivers are jointly and severally liable to pay the compensation.

14. With regard to the question of quantum of compensation, we shall first take

up the case of Krishnan (claimant In M. C. (MVC) No. 40 of 1976); the claimant was 26 years of age. He was getting a salary of Rs. 400/- per month as per the statement of PW 1 Chandra Sekhar, the Welfare Officer of the Mill. He lost his left hand below the shoulder joint. According to Schedule I to the Workmen's Compensation Act, 1923, the disability is 80%. Therefore, the loss of earning would be Rs. 320/- per month and Rs. 3,840/- per annum. Having regard to the age of the claimant and the rate of interest prevailing now, we choose "10" as the multiplier. That gives us a sum of Rs. 38,400/- . Making allowance for special damages, we deem it just and proper to award a sum of Rupees 40,000/- as against Rs. 70,000/- awarded by the Tribunal to the claimant without proper reasons. If Rs. 70,000/- are invested in a Bank, the claimant would get Rs. 7,000/- annually by way of interest which works out to nearly a sum of Rs. 600/- per month. As a matter of fact, the loss of earning amounts to only Rs. 320/- per month. Hence, we hold that the compensation awarded by the Tribunal to the claimant in M. C. (MVC) No. 40 of 1976 is excessive.

15. Adverting now to the claimant/ injured in M, C. (MVC) No. 39 of 1976, at the time of the accident, he was aged about 40 years and he was also getting a salary of Rs. 400/- per month. Having regard to his age, we fix the total compensation at Rs. 35,000/- The Tribunal has awarded Rs. 57,000/- to him which is obviously exorbitant for reasons discussed above. Since the overall figures in the two cases reflect fair compensation it is not necessary to award compensation in addition under other heads (vide. Fletcher's case 1969 ACC CJ 99 (CA)).

16. In the result, therefore, Miscellaneous First Appeal No. 14 of 1979, is partly allowed and the total compensation of Rs. 70,000/- awarded by the Tribunal is reduced to Rs. 40,000/-. The respondents viz., the owners of both the vehicles and the insurers are directed to pay the same to the claimant with interest at 6 % per annum from the date of the petition till payment as also the costs of the claimant before the Tribunal. It is further clarified that the liability of the Insurance Company (original respondent-3) is limited to Rs. 5,000/-. The Insurance Company shall pay the same along with interest at 6% per annum from the date of the petition till payment. The rest of the amount shall be paid by either or both the owners of the vehicles jointly and severally.

17. Miscellaneous First Appeal Number 15 of 1979, is partly allowed and the compensation of Rs. 57, 000/- awarded by the Tribunal is reduced to Rs. 35,000/-. The respondents viz., the owners of both the vehicles and the insurers, shall pay the same along with interest at 6% per annum from the date of the petition till payment as also the costs of the claimant before the Tribunal. The liability of the Insurance Company (original respondent-3) is limited to Rs. 5,000/-. The Insurance Company shall pay the same to the claimant along with interest at 6% per annum from the date of petition till payment. The rest of the amount shall be paid by either or both the owners jointly and severally to the claimant.

18. The parties shall bear their own costs.

19. Appeal partly allowed.