
(2015) 12 KAR CK 0170
In the Karnataka High Court
Case No : M.F.A. No. 8500 of 2015 (MV)

The Managing Director, K.S.R.T.C. Central Office	APPELLANT
Vs	
Jayamma and Others	RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 81

Citation : (2015) 12 KAR CK 0170

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : K. Nagaraja, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The Managing Director of the Karnataka State Road Transport Corporation-owner of the offending bus bearing certificate of registration KA-09-F-3872 when arraigned as respondent No. 1 in the claim petition registered as MVC 908/2014 instituted by respondents 1 to 4 under Section 166 of the Motor Vehicles Act, 1988, for short "MV Act", before the Motor Accident Claims Tribunal, Arkalgud, for short "MACT" when clubbed with MVC 901/2014, another claim petition for compensation arising out of the same accident that occurred on 2.2.2014 at 10 a.m. involving the said bus and the maruti car bearing certificate of registration KA-45-M-1870 at K.R. Nagar-Chunchanakatte road, near Siddanakoppalu gate, aggrieved by the finding attributing actionable negligence on the part of the driver of the bus and the award of Rs. 7,80,000/- with interest at 6% p.a. from the date of petition, by common Judgment and award dated 7.8.2015 in MVC 908/2014 and 901/2014 insofar as it relates to MVC 908/2014 has presented this appeal.

2. The first submission of the learned counsel for the appellant that the maruti car bearing certificate of registration KA-45-M-1870 was driven at a high speed in a rash and negligent manner in the middle of K.R. Nagar-Chunchanakatte road near Siddanakoppalu gate, and dashed against the appellant's bus bearing

registration KA-09-F-3872 hence, actionable negligence was to be attributed to the driver of the said car and not the driver of the bus, is noticed only to be rejected.

3. There is no dispute that the width of tar road at the place of impact is 22 ft., and on either side there is kachcha road i.e. mud road measuring 5 ft. There is not in dispute that the width of the bus is around 10 ft. and at the time of accident, bus was on the Tar Road and not on the Katcha Road. There is also no dispute that the distance from the place of impact on the tar surface of road and the edge of the road on either side is not known since Ex. P4-rough sketch prepared by the police, after the accident does not disclose such a measurement nor evidence is tendered by the driver of the bus in his testimony. It is disputed that there was raagi hay on the tar road at the place of impact. Yet again there is no dispute that the maruti car and bus were traveling in the opposite directions, and the damage was to the front right side of the bus.

4. In order to prove the first issue over negligence on the part of the driver of the bus belonging to the appellant, the claimant examined one Sarojamma as PW-1 and Jayamma as PW-2, who spoke to the police records Exs. P1 to P8 i.e. FIR, copy of complaint; spot mahazar; spot sketch; copy of inquest report; P.M. report; IMV report and charge sheet. On the other hand for the appellant, the driver was examined as RW-1 and marked Exs. R1-2 and Exs. R3-4 certified copies of interim compensation receipts and Ex. R5 paper publication regarding accident which the 2nd respondent was examined as RW2. The oral testimony of PWs 1 and 2 insofar as first issue over actionable negligence is in the direction of establishing the contents of the police records, that it was due to high speed and rash and negligent manner of driving of the appellant's bus that caused the accident to the maruti car coming in the opposite direction on its correct side of the road. In other words, the bus was driven by occupying more than half the width of the road i.e., on the wrong side of the road, and dashed against the on-coming maruthi car causing damage to the right side of the bus and centre portion of the maruthi car.

5. In the oral testimony of RW-1, driver, it was elicited that it was the driver of the on-coming maruti car, in order to avoid the raagi hay on the road lost control and dashed against the bus in the opposite direction and caused the accident. In addition, it was stated that the payment of interim compensation was only on humanitarian ground and not that the appellant admitted its guilt. RW-2, none other than 2nd respondent, in his deposition did not admit to have spread the hay on the road but said unequivocally that it was the driver of the appellant's bus, at a high speed and in a rash and negligent manner dashed against the maruti car coming in the opposite direction and caused the accident. Thus RW-2 supported the case of the claimants.

6. Regard being had to the evidence both oral and documentary indisputably the claim that there was raagi hay spread on the road by the 5th respondent was not established and that the driver of the maruti car in order to avoid the hay had

driven the car on the wrong side of the road. So also proof of fact that the place of impact on the tar road measuring 22 ft. was at a distance of more than half the width of the tar road and on the side in which the bus was traveling is not established. Ex. P4-spot sketch does not indicate the exact measurement of the distance from the edge of the tar road on either side to the place of impact, coupled with the fact that width of the bus is 10 ft., and was not on the katcha road, then there should have been some material to establish that the bus was, in fact, well within its half portion of the tar road. That evidence is not forthcoming. In short, there is lack of substantial legal evidence in respect of the case sought to be made out by RW-1, the driver of the bus claiming to be on his right side of the road in to which the maruti car from the opposite direction came and dashed against the bus. The bus being larger than the car, ought to have been driven with circumspection, more so when the tar road measured 22 ft in width.

7. It is no doubt true that payment of interim compensation by no stretch of imagination could be termed as admission of guilt of rash and negligent driving by the appellant's driver. At the same time, paper publication Ex. R5 informing about the accident and the spread of raagi hay on the road, by itself and nothing more is not acceptable evidence. In *Shri Ravinder Kumar Sharma Vs. The State of Assam and Others*, and *Ashok Kumar Pandey Vs. The State of West Bengal and Others*, , the Apex Court held that a newspaper report is mere hearsay and no proof of facts stated therein since presumption of genuineness attached under Section 81 of the Act, a newspaper report cannot be treated as proof of facts stated therein. Applying the very same principle, Ex. R5 the newspaper is unavailable to support the case of the appellant-owner of the bus.

8. The compact disc and positive photographs though said to have been produced by the appellant before the MACT when not produced, there was no other acceptable evidence in support of the case of the appellant to record a finding that actionable negligence was to be attributed to the driver of the maruti car.

9. Having appreciated the evidence, both oral and documentary, the only conclusion that is possible is that the bus in question driven in a rash and negligent manner caused the accident. No exception can be taken to the reasons findings and conclusions arrived at by the MACT in recording a finding in the affirmative over issue No. 1 attributing actionable negligence on the driver of the bus.

10. As regards the quantum of compensation, although in the appeal memorandum grounds are advanced challenging the same, nevertheless Sri. K. Nagaraja, learned counsel for the appellant does not press those grounds.

11. In the result, appeal devoid of merit is dismissed. The amount, in deposit, is directed to be transmitted to the MACT forthwith.

It has become the order of the day that appellant-Corporation has engaged

services of drivers devoid of road sense while driving heavy passenger vehicles. It is not known as to whether departmental proceedings are initiated and meaningful finality achieved in cases of committing accidents. Lip sympathy is not what is expected but drastic action and in the alternative to train drivers before they are put on Public streets.