
(2007) 10 KAR CK 0066
In the Karnataka High Court
Case No : M.F.A. No. 11606 of 2005 (MV)

The Managing Director, NWKRTC Central Offices	APPELLANT
Vs	
Smt. B. Manjula and Others	RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 279, 304 A

Citation : (2008) ILR (Kar) 433 : (2008) 2 KarLJ 313 : (2007) 4 KCCR 2731

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : A. Ravishankar, M. Sudershan and H.L. Lokeshwari, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The Karnataka State Road Transport Corporation, for short KSRTC has preferred this appeal calling in question the judgment and award dt. 2.9.2005 in MVC No. 348/93 on the file of the Addl. Civil Judge (Sr. Dn.) & MACT, Tumkur, for short the "MACT".

2. The respondents 1 to 3 claiming to be the widow and children of one G. Muniraju, who succumbed to the grievous injuries in an accident that occurred on 16.10.1992 at 11.30 p.m. due to the rash and negligent driving of the bus bearing registration No. KA 31F 74, instituted a claim petition invoking Section 166 of the Motor Vehicles Act 1988, for short Act, for Rs. 4,50,000/-, as compensation. The KSRTC, arranged as respondent No. 1 in the petition opposed the claim by filing statement of objections, interalia denying the accident and injuries to the deceased. In addition, it contended that the claimants were not the legal representatives of the deceased Muniraju. In the premise of the pleadings of the parties, the MACT framed issues, recorded the evidence of six witnesses for the claimants as PWs 1 to 6, marked 17 documents as Exs.P1 to P17 and for the respondents, the evidence of driver RW1 and marked four

documents as Exs. R1 to R4. The MACT having regard to the material on record and appreciating the evidence both oral and documentary, recorded a finding that the driver of the vehicle was negligent and that the claimants were the legal heirs of deceased Muniraju and awarded Rs. 2,13,016/- with interest at 6% p.a. from the date of petition, as compensation, by the impugned judgment and award.

3. Learned Counsel for the appellant advances the following two contentions:

(a) that the MACT was not justified in attributing negligence to the driver of the bus, in the light of the judgment of the JMFC, Gubbi, in CC No. 123/93.

(b) that the MACT was not justified in recording a finding that the claimants were the legal heirs of the deceased Muniraju while, in fact the first claimant was the wife of one C.B. Chandrashekhar, evident from documents Ex.R3 and R4.

4. Respondents though served have remained absent and are unrepresented.

5. Having heard the Learned Counsel for the Appellant, perused the pleadings, the Records of the MACT, and examined the Judgement and Award, the only question that arises for decision making is "whether, in the facts, circumstances and evidence on record, the findings and conclusions arrived at by the MACT in the impugned judgement and award, calls for interference?"

6. It is no doubt true that the criminal proceedings in C.C. No. 123/93 launched against the driver of the bus in question, the Jurisdictional Magistrate by judgment dt. 26.7.1999 Ex.R1 concluded that though the offences alleged were u/s 279 and 304-A of the Indian Penal Code, but in view of the Mahazar witness and the eye witness having turned hostile and absence of evidence to establish negligence of the driver, the prosecution had failed to prove the charges. On account of lack of evidence the prosecution failed in its endeavor to prove the charges and the driver succeeded before the Magistrate. That by itself and nothing more, it cannot be concluded that an accident involving the bus in question never occurred on the fateful day. Before the MACT the claimant examined two eye witnesses viz., Kumar and Narasimhaiah PWs 2 and 3, who tendered evidence testifying to the fact that on 16.10.1992 at 11.30 p.m. while they were near Gubbi bus stand, the bus in question coming from Bangalore and proceeding to Sirsi, at a high speed in a rash and negligent manner, dashed against deceased Muniraju did not stop, but proceeded further. Nothing is elicited in the cross-examination of these witnesses, so as to discredit their Statements. The claimant examined the Asst. Sub-inspector of Police by name Bomanna, as PW-4, who spoke to the fact that while as a Station House Officer on 16.10.1992, he received information about the accident that occurred near Gubbi bus stand and the dead body of Muniraju with an identity card, disclosing that the deceased was a worker in Minerva Mills and after holding an enquiry, was informed that the bus in question had caused the accident, injury and death. In the backdrop of these facts, the MACT recorded a finding that the death of Muniraju was on account of involvement of the motor vehicle i.e. the bus in question. This finding

of the MACT though characterised as perverse and unjustified is not sought to be dislodged on any legally permissible ground, by pointing out to any relevant material. As a matter of fact, though RW, the driver of the bus, in his deposition stated that the vehicle did not meet with an accident, nevertheless, strangely the KSRTC did not produce the trip sheet and the log sheet of the bus in question, which would have perhaps thrown light on the facts in dispute. The mere acquittal by the Magistrate, that too on technicalities, more so due to lack of evidence, it cannot per se be inferred that the Motor Vehicle in question was not involved in the accident and that it was not driven in a rash and negligent manner. Keeping in mind the degree of proof required in claim cases under the Act, not being strict proof, but that of preponderance of probability, the overwhelming oral evidence of the eye witness and the police officer, probabalises the accident involving the bus in question, driven in a rash and negligent manner. The first contention must necessarily fail and is, accordingly rejected.

7. The second contention need not detain the Court for long. In order to establish the allegation that the first claimant was not the wife of deceased G. Muniraju, the appellant-respondent produced a copy of voters list Ex.R3 and an extract of the ration card Ex.R4. In Ex.R3, the name of one C.B. Chandrashekhar is shown to be the husband of one B. Manjula, r/o No. 133, Upparahalli while the extract of the ration card dated 20.5.1998 shows the name of one B. Manjula, w/o C.B. Chandrashekar. The claimants in order to prove their relationship with that of the deceased produced Exs.P6 and P7, the birth certificates of claimants 2 and 3 disclosing the names of the parents as G. Muniraju and B. Manjula. In addition, family pension card Ex.P8 issued by the Regional Provident Fund Commissioner, disclosed grant of Provident Fund to B. Manjula, the 1st claimant, whose photograph is attached for identification. On account of death of G. Muniraju, a provident fund account holder. Ex.P9 identity card issued by the Election Commission of India disclosed that B. Manjula was the w/o G. Muniraju. The certificates Exs.P10 to 12 issued by the authorities of the Village Panchayat, and the educational institution where the 2nd claimant is studying, as well as the Caste Certificate issued by the Tahsildar disclosed that claimants 2 and 3 are the children of the 1st claimant and the deceased G. Muniraju. Copy of the marks card issued by the Office of the Deputy Director of Public Instructions in respect of the 2nd claimant disclosed that he is the son of G. Muniraju.

8. In addition, claimants examined one C.B. Chandrashekhar, as PW5, who produced the election photo identity card both of himself and his wife Manjula, marked as Exs. P15 and 16. These documents clearly disclose that B. Manjula, w/o C.B. Chandrashekhar is not the very same person as B. Manjula, the 1st claimant as found in the photo identity card Ex.P9 and ExP8 the provident fund pension card. The evidence of PW-5 C.B. Chandrashekhar rebutted the claim put-forth by the appellant-Corporation that the 1st claimant was not the wife of G. Muniraju, but the wife of C.B. Chandrashekhar.

9. In order to establish that G. Muniraju was the employee of M/s Minerva Mills,

one G. Sellappa, Personnel Manager of the said Mills was examined as PW-6, who produced the salary certificate Ex. P17 of the deceased establishing the fact that the deceased Muniraju was an employee working in the Bleaching Section of the said Mill.

10. A close scrutiny of the depositions of PWs 1,5 and 6 would disclose that the 1st claimant, wife of G. Muniraju, gave birth to claimants 2 and 3 from out of the wedlock and that the 1st claimant was not the wife of C.B. Chandrashekhar. The documents Exs.P6 and P17 support the contention of the claimants that they are the legal heirs of deceased G. Muniraju. The contention of the learned Counsel for the appellant, to the contrary must necessarily fail.

11. In the result, this appeal is without merit and is, accordingly dismissed with costs of Rs. 3,000/- payable to the claimants together with compensation, before the MACT. Registry is directed to forthwith transmit Rs. 25,000/- in deposit to the MACT.

12. The KSRTC is granted three weeks" time to deposit the balance of the amount with interest and cost before the MACT.