
(1980) 09 KAR CK 0004

In the Karnataka High Court

Case No : Regular Second Appeal No. 27 of 1974

V. Narayana Reddy

APPELLANT

Vs

Syed Azgar Bareed

RESPONDENT

Date of Decision : 10-09-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Penal Code, 1860 (IPC) — Section 304 A

Citation : (1981) ACJ 307

Hon'ble Judges : M.P. Chandrakantharaj Urs, J

Bench : Single Bench

Advocate : R.N. Byra Reddy, for the Appellant; Karegowda, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Chandrakantharaj Urs, J.—This second appeal u/s 100 of the CPC is by the 1st Defendant.

2. The 1st Respondent herein (who will be referred to as "the Plaintiff in the course of this order) was the Plaintiff in the trial court. Initially, he filed the suit in forma pauperis in the Court of the Civil Judge, Kolar. His right to sue in forma pauperis was contested by the 2nd Respondent therein in the first instance and thereafter, given up resulting in the suit being transferred to the Court of the Munsif at Kolar. The suit was for recovery of a certain sum from the Defendants 1, 2, 3 and 4. The 2nd Defendant was the driver of the bus in which the Plaintiff was traveling and in the course of such travel the bus was involved in an accident as a result of which the Plaintiff suffered fracture of the right femur resulting ultimately in amputation of his right leg.

3. The Plaintiff's suit claim was for damages as a result of the rash and negligent driving of the bus by the 2nd Defendant Venkataramaiah (who died during the pendency of the proceedings). The Plaintiff was traveling on 7.4.1960 from Chintamani to Srinivasapura in a motor vehicle (stage carriage) bearing

registration No. MYF 2616 owned by the 1st Defendant-Appellant. The bus went off the road as a result of which it fell into a ditch thereby causing injuries to passengers and among them the Plaintiff was one who suffered fracture of the right femur ultimately causing him the loss of his right leg and total disability to eke out a living by manual labour as blacksmith which was his profession prior to the accident.

4. The suit was resisted by all the Defendants after the 3rd Defendant had been deleted as an improper party.

5. In the written statement the 1st Defendant-Appellant, took the stand that he was the owner of the bus but his brother was managing the running of the bus. The second Defendant was not his employee. He had no knowledge of the accident. In those circumstances the Plaintiff was not entitled to damages he had claimed in the sum of Rs. 10,000/-.

6. In all, five issues came to be framed by the trial Court. Issues 2, 3 and 5 alone are relevant for the purpose of disposing this appeal and they are:

(2) Is the accident due to the rash and negligent driving of the vehicle by the 2nd Defendant ?

(3) What is the damage sustained by the Plaintiff ?

(5) To what damages is the Plaintiff entitled?

7. The Plaintiff examined himself and four others and got marked as many as 15 documents, while the Defendant Appellant examined himself alone resisting the suit claim. The trial court found applying the maxim "res ipsa loquitur" that the 2nd Respondent, the driver of the vehicle was rash and negligent in driving the vehicle. He also found on issue No. 5 on the evidence available that Plaintiff was contributing at least Rs. 50 to the maintenance of his large family from his earnings and on that basis quantified the damages for the loss of the use of his right leg at Rs. 10,000/-. But, however, apportioned the liability between the 1st Defendant, the owner of the vehicle and the 4th Defendant insurer of the vehicle in the ratio of Rs. 8,000/- and Rs. 2,000/- between them respectively.

8. Aggrieved by the judgment and decree against him, the 1st Defendant-Appellant preferred R.A. 54/1967 in the Court of the Civil Judge, Kolar. The lower appellate court concurred with the reasoning and findings of the trial court and confirmed the judgment and decree of the trial court.

9. In this second appeal, Sri R.N. Byra Reddy, learned Senior Counsel for the Appellant-Defendant has urged only three grounds in support of the case of the Defendant for setting aside the judgments and decrees of the Courts below.

10. Firstly, he has contended that the Courts below erred in mechanically applying the maxim "res ipsa loquitur" to the facts of the case in the absence of adequate pleadings by the Respondent-Plaintiff as to the negligence on the part of the 2nd Defendant and, therefore, erred in law by decreeing the suit of the

Plaintiff. Secondly, he contended that the quantum of damages awarded was not based on any proof as to the income of the Plaintiff-Respondent. Thirdly, he contended that the trial Court did not decree the suit with interest in the judgment portion of it and therefore, the decree drawn up on the basis of the judgment, awarding interest was opposed to law and therefore not correct.

11. In order to appreciate the first contention advanced for the Appellant it is necessary to state that the trial court relied upon the ruling of the Supreme Court in the case of Gobald Motor Service Ltd. v. R.M.K. Veluswami 1958 A.C.J. 179 (S.C.); Subba Rao, J., as he then was, on the facts of the case, held that the first question for consideration was whether the accident was due to any negligence on the part of the driver and in that behalf the topography and the physical condition of the locality where the accident took place would, to a large extent help in deciding negligence. In that case, the topography was such that on account of the existence of a culvert with a short curve immediately thereafter and the vehicle in question having forcibly hit one of the stones breaking the same and then hitting a tree on the road side and peeling the bark off and even there after, traveling a considerable distance before it came to a stop, was clearly indicative of high speed at which the vehicle was being driven. Though the learned Judge did not in so many words state so the reasoning adopted by him was similar to the principle underlying the maxim "*res ipsa loquitur*" (things speak for themselves).

12. Sri Byra Reddy, learned Counsel, argued that when there was no pleading as to how the driver was negligent it was not open to the Courts below to extend the maxim "*res ipsa loquitur*". He attempted to distinguish the ruling in Gobald Motor Service Ltd's case¹ and the present case on the ground that there was specific pleading in the said case which was wanting in the case of the Plaintiff-Respondent. This argument should fail because a perusal of the plaint indicates in para-4 thereof that the accident was due to the rash and negligent driving of the second Defendant which resulted in the accident and made the Plaintiff a cripple for life. It is in evidence that the Plaintiff-Respondent was a passenger in the rearmost seat. If in that position he suffered from the accident, it cannot be said that he was in a position to plead in detail as to exactly how the 2nd Defendant-driver of the motor vehicle caused the accident. But, on the facts and circumstances of the case, as made out in the oral evidence of other witnesses and relying upon Ext. P. 10 and P. 11 the report of the Motor Vehicles Inspector and the spot mahazar respectively, it is reasonable to hold that the pleading was adequate and the Courts below were correct in extending the maxim "*res ipsa loquitur*". It is to be stated that the Motor Vehicles Inspector's report did not indicate any serious mechanical disability in the vehicle even after the accident had taken place except to indicate that the damage done to the vehicle was due to the vehicle having traveled nearly 300 feet leaving the road on the light edge of the road and thereafter falling into the ditch. In such a situation, even with the minimum of pleadings, the burden of proof shifts on to the Defendant to prove that negligence could not reasonably be inferred on the basis of the

circumstances found.

13. However, learned Counsel Sri Byra Reddy, drew my attention to the recent ruling of the Supreme Court in the case of Syad Akbar Vs. State of Karnataka, Sarkaria, J. speaking for the Bench, in para 19 has held as follows:

As a rule, mere proof that an event has happened or an accident has occurred, the cause of which is unknown, is not evidence of negligence. But the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of some body as the cause of the event or accident. It is to such cases that the maxim *res ipsa loquitur* may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the Defendant.

14. Later, after discussing several leading cases from English, American, Australian and Canadian Courts, he has made it clear that the said maxim should not be extended mechanically in all cases. In fact, in discussing the evidentiary value of the maxim, the learned Judge, speaking for the Bench, held that it may fall into the category of permissive presumptions or presumptions of facts and no more. But, why the learned Judge did not want the maxim to be applied mechanically in all cases was due to the fact that the Appellant therein had been convicted for a criminal offence u/s 304-A of I.P.C. and in that circumstance, distinguishing a criminal case from a civil case involving a tort liability, held that the maxim "*res ipsa loquitur*" should not be extended to criminal cases. It is on this latter observation to be found in para 28 of the judgment of the Supreme Court, as reported in the A.C.J. that Sri Byra Reddy placed reliance. That cannot be of much assistance to the Appellant herein because nowhere in the said decision has the Supreme Court said that on the facts and circumstances of the case the maxim should not be applied or pressed into service in a civil action founded on tort liability. The Defendant-Appellant who took a very bland and bald stand in his written statement denying all knowledge and all liability and disowning the driver, cannot take advantage of either inadequacy of the pleadings on the part of the Plaintiff or application of the maxim by the Courts below to decree the suit on the proved facts of the case. It is not disputed that the accident did take place. It was in evidence that the vehicle was found three hundred feet away on the right side of the road. There was evidence of the Doctor who had examined the Plaintiff and some other passengers. The second Defendant had filed a written statement taking the stand that he lost control of the vehicle because the steering did not work. He having died during the pendency of the proceedings had no opportunity to substantiate his stand. But that cannot be held to have prevented the Plaintiff from bringing a suit against the Defendant for vicarious liability. The Defendant there not having discharged the burden shifted on to him for the reasons given earlier cannot now complain that the Plaintiff himself neither pleaded nor discharged the onus on him to prove the negligence on the part of the 2nd Defendant.

15. The second contention urged for the Defendant is also not well founded. The

trial court has believed the oral evidence of the Plaintiff and his witnesses and the first Defendant in the cross-examination of those witnesses has not elicited anything favorable to him. Undisputedly, the Plaintiff was a young and well built man working as a blacksmith. I, therefore, find no reason to interfere with the correctness of the findings recorded by the Courts below in regard to the quantum of compensation and in any event it cannot be said to be an error of law when the courts below have not misdirected themselves in appreciating the evidence on record.

16. The last ground urged for the Defendant-Appellant that there is error of law in the decree drawn up by the trial court inasmuch as interest was awarded in the decree while the same was not awarded in the judgment portion of it is also not well founded. The judgment of the trial court clearly stated that the suit was decreed as prayed for and from the plaint it is seen that the Plaintiff had prayed for costs and current interest. Therefore, the interest awarded at six per cent from the date of suit till the date of realisation in the decree is not an error in law.

17. For the reasons given, this second appeal fails and is dismissed. But in the circumstances of the case there will be no order as to costs.