

Smt. Chandrababha P Vs. The Divisional Controller

Smt. Chandrababha P Vs. The Divisional Controller

SooperKanoon Citation : sooperkanoon.com/1234278

Court : Karnataka

Decided On : Nov-04-2022

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA 9348/2018

Appellant : Smt. Chandrababha P

Respondent : The Divisional Controller

Judgement :

1 MFA.No.9348/2018 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE04H DAY OF NOVEMBER, 2022 R BEFORE THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR M.F.A.NO.9348/2018 (MV-I) BETWEEN: SMT. CHANDRAPRABHA P., AGED ABOUT30YEARS, W/O JAGADEESH D.K., R/AT KUNTHANAHALLI VILLAGE, BANNUR HOBLI, T.NARASIPURA TALUK, MYSURU DISTRICT- 571 101. ...APPELLANT (BY SRI LOKESH C.K., ADVOCATE FOR SRI P.NATARAJU, ADVOCATE) AND: THE DIVISIONAL CONTROLLER KARNATAKA STATE ROAD TRANSPORT CORPORATION (KSRTC), MYSURU RURAL DIVISION BANNIMANTAP, MYSURU - 570 015. RESPONDENT (BY SRI F.S.DABALI, ADVOCATE) THIS MFA FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED:

14. 08.2018 PASSED IN MVC NO.1085/2013 ON THE FILE2MFA.No.9348/2018 OF THE JUDGE, ADDITIONAL COURT OF SMALL CAUSES, SENIOR CIVIL JUDGE, MACT, MYSURU, DISMISSING THE CLAIM PETITION FOR COMPENSATION. THIS M.F.A. COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The present appeal is filed by the appellant/claimant challenging the judgment and award dated 14.08.2018 passed in MVC.No.1085/2013 by the learned Judge, Addl. Court of Small Causes and Senior Civil Judge and MACT, Mysuru, (hereinafter referred to as the Tribunal for brevity) praying to set aside the judgment and award passed by the Tribunal.

2. The claim petition filed by the claimant was dismissed. Therefore, the claimant has filed the present appeal.

3. Brief facts of the case are that, on 22.08.2012 at about 5.30 pm., the claimant after finishing her work was traveling from H.D.Kote to 3 MFA.No.9348/2018 Mysuru in KSRTC bus bearing Reg.No.KA-09-F-3957 and the driver of the bus was driving the bus in a rash and negligent manner and at reckless speed and while driving so, the engine of the bus caught fire and the entire bus was covered with smoke. At that time, when the passengers of the bus were alighting from the bus, the driver negligently moved the bus and consequently, the claimant fell down from the bus, resulting in grievous injuries to her right leg. Immediately, she was shifted to JSS hospital, Mysuru, wherein it was diagnosed that she had a fracture of both bones of right leg.

4. Learned counsel for the appellant/claimant submitted that the engine of the bus caught fire and the bus was filled with smoke. At that time, all the passengers were alighting from the bus. When the claimant was also alighting from the bus, at that moment, the driver of the bus has recklessly moved the bus, due to which, the claimant fell down on the 4 MFA.No.9348/2018 ground and sustained grievous injuries. Therefore, it is submitted that due to rash and negligent driving by the driver of the bus, the claimant has suffered grievous injuries. Therefore, the

Tribunal has committed error in dismissing the claim petition only on the ground that the police have filed B final report against the driver of the bus. Therefore, submitted that this is the wrong approach made by the Tribunal. Hence, prays to set aside the judgment and award passed by the Tribunal.

5. On the other hand, learned counsel for the respondent-KSRTC submitted that, in the present case, the driver has not moved the bus and while the claimant alighting from the bus had fallen from the bus on the ground and sustained injuries. Therefore, submitted that the claimant herself had fallen on the ground and sustained injuries and the driver of the bus was not rash and negligent in driving the bus as the bus was stopped. Therefore, the Investigating 5 MFA.No.9348/2018 Officer has rightly filed B final report and the driver of the bus did not drive the bus in a rash and negligent manner. Therefore, the Tribunal by considering the same has rightly dismissed the claim petition as there is no rash and negligent aspect is proved on the part of the driver of the bus. Therefore, prays for dismissal of the appeal.

6. The Tribunal dismissed the claim petition on the ground that the Investigating Officer had filed B final report by stating that the driver of the bus was not rash and negligent in driving the bus. Therefore, based on this, the Tribunal has dismissed the claim petition as there is no rash and negligent aspect proved on the part of the driver of the bus. Further the Tribunal opined that the claimant has not produced the B final report. Therefore, it is opined that the claimant had hidden the B final report from the Tribunal. Further opined that the claimant has not challenged the B final report. Therefore, B final 6 MFA.No.9348/2018 report filed by the Investigating Officer had attained finality. Therefore, based on this, during the course of investigation, the rash and negligent driving of the KSRTC bus is not proved. Hence, the Tribunal has rightly dismissed the claim petition.

7. Further the Tribunal opined that in the hospital records, the history is mentioned as fallen from bus while alighting from the bus and sustained injuries. Therefore, on this ground, the Tribunal has dismissed the claim petition. Tortuous liability:

8. In the present case, R.W.1- conductor of the bus has given evidence. From the evidence of claimant who is examined as P.W.1, complaint- Ex.P2 and Ex.P-3 and

FIR-Ex.P.1 and from the evidence of R.W.1- conductor of the bus, it is proved that the said mishap in the case was occurred on 22.08.2012 at about 5:30 p.m., when the claimant was travelling 7 MFA.No.9348/2018 from H.D.Kote to Mysuru in KSRTC bus bearing No.KA-09-F-3957, due to failure of radiator of the bus, the engine of the bus caught fire and the bus was filled with smoke. Under these constraints, all the passengers in the bus were alighting from the bus and in that process, the claimant had suffered injuries while she was alighting from the bus. This fact is not disputed by the respondent-KSRTC. The evidence of R.W.1 - conductor of the bus speaks and proves the above said incident. The crucial aspect is as to whether the driver of the bus was rash and negligent in driving the bus or KSRTC authority are rash and negligent responsible for the incident/accident. No doubt, in the present case, the Investigating Officer has filed B final report by opining that the driver of the bus was found not to be rash and negligent in driving the bus. The police have to conduct investigation upon the incident to find out whether the person named as accused has committed any wrong 8 MFA.No.9348/2018 thing based upon the incident or accident occurred. Therefore, there are two aspects, one thing is occurring of the accident or incident and whether the driver of the bus was rash and negligent or not.

9. In the present case, it is the allegation of the claimant that while she was alighting from the bus, the driver of the bus has moved the bus recklessly and negligently, due to which, when the claimant was in the process of alighting from the bus had fallen on the ground and sustained injuries. The said allegation is denied by the respondent-KSRTC. But upon considering the cross-examination of claimant-P.W.1, there is no cross-examination or even defence by the KSRTC stating that the driver was not rash and negligent in moving the bus. Therefore, on this aspect, the only oral evidence available is exactly opposite to each other that is the driver of the bus has moved the bus recklessly and negligently, which is denied by the respondent-KSRTC. It is also admitted 9 MFA.No.9348/2018 by the respondent-KSRTC that due to failure of radiator, engine of the bus caught fire. This is deposed by R.W.1-conductor of the bus before the Tribunal. Therefore, the police may be right in filing B final report by coming to the conclusion that the driver may not be rash and negligent in moving the bus. Therefore, the police have filed the B final report. Just because, the claimant has not filed protest petition to

the B final report that cannot be a ground to reject the claim petition. The motto of the Investigation Officer is to find out whether the person has committed an offence or not, based on the accident or incident. In some circumstances, mishap might have been caused like in the present case and the driver may not be responsible to the accident or incident. Therefore, under these circumstances, the investigation carried out revolves around the accused as to whether the accused has committed an offence or not. If it is found that the driver has not committed 1 0 MFA.No.9348/2018 an offence of rash and negligent driving of the bus as in the present case, quite naturally, the B final report is filed. But such B final report does not negate the occurrence of accident or incident. Therefore, in the present case, the accident/incident is proved from the evidence of R.W.1 - conductor who was working as conductor on the day of the accident. Therefore, under these circumstances, the claimant was constrained to alight from the bus, but not on her own wishes or will when the engine of the bus caught fire due to failure of radiator and filled with smoke, the claimant was constrained to alight from the bus as other passengers were alighting from the bus. Therefore, the act of tort is to be considered in the present case that due to negligence of assigning the bus to the route which was having mechanical defect in the engine or radiator is nothing, but causing negligence by the KSRTC.

10. Upon considering the facts and circumstances involved in the case, the driver may not 1 1 MFA.No.9348/2018 be found to be rash and negligent, but the engineers/technicians whoever in the workshop of the KSRTC have assigned the mechanically defected bus on the route for carrying passengers is nothing but gross negligence of respondent-KSRTC. Therefore, just because, the police have filed B final report as above stated that does not absolve the tort liability on the part of the respondent - KSRTC.

11. In the claim proceedings, the rash and negligent aspect are normally considered based on considering and appreciating the evidence available on record, but under some facts and circumstances, as involved in the present case, the driver may not be found to be reckless and negligent in driving the bus, but assigning mechanically defected bus by the respondent-KSRTC on the road for carrying passengers is nothing, but an act of gross negligence. This fact is not

correctly appreciated by the Tribunal. Therefore, under these circumstances, the 1 2 MFA.No.9348/2018 respondent-KSRTC is held to be tortuously liable for the wrong committed by its employees. Therefore, under these circumstances, the mishap was caused and certainly, it cannot be said that it is self fall from the claimant and why the claimant was constrained to alight from the bus is to be appreciated in the background of the facts and circumstances and evidence available as discussed above. Therefore, the judgment and award passed by the Tribunal in dismissing the claim petition is liable to be set aside. Therefore, it is held that the KSRTC authorities/officials are responsible for assigning the mechanically defected bus to the route for carrying passengers. Regarding quantum of compensation:

12. In the present case, the claimant is a woman was aged about 25 years and was working as a Teacher in the Government Primary School. As per Ex.P.4 - wound certificate and other medical evidence 1 3 MFA.No.9348/2018 the claimant has suffered fracture to tibia and fibula bone of right leg and she was in the hospital as inpatient for a period of 12 days. Therefore, considering the nature of injuries sustained as above stated the compensation of Rs.40,000/- is awarded under the head injury, pain and suffering.

13. There is no evidence by the claimant as to how disability has caused loss of earning capacity to her. Therefore, no compensation is awarded under the heads loss of future income due to disability.

14. Ex.P7 is the medical bills worth Rs.49,993/- and the same is not found to be double claimed. For accepting the same, compensation of Rs.50,000/- is awarded under the head medical expenses and hospitalization charges.

15. The compensation of Rs.10,000/- is awarded under the head food, nourishment and attendant charges. 1 4 MFA.No.9348/2018 16. Further compensation of Rs.30,000/- is awarded under the head loss of amenities.

17. Thus, in all the appellant/claimant is entitled to compensation as follows: Injur, Pain and sufferings Rs. 40,000/- Medical expenses Rs. 50,000/- Food, nourishment and Rs. 10,000/- attendant charge Loss of amenities Rs. 30,000/-

TOTAL Rs.1,30,000/- 18. The appellant/claimant is entitled to compensation of Rs.1,30,000/- along with interest at the rate of 6% per annum from the date of petition till the date of realization.

19. Accordingly, I proceed to pass the following:

ORDER

The appeal is allowed. 1 5 MFA.No.9348/2018 The impugned judgment and award dated 14.08.2018 passed in MVC.No.1085/2013 by the learned Judge, Addl. Court of Small Causes and Senior Civil Judge and MACT, Mysuru, is hereby set aside. The appellant/claimant is entitled to compensation of Rs.1,30,000/- along with interest at the rate of 6% per annum from the date of petition till the date of realization. The respondent-KSRTC shall deposit the compensation amount within a period of eight weeks from the date of receipt of copy of this order. Draw award accordingly. No order as to costs. Sd/- JUDGE PB

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com