

The Divisional Controller vs Ramesh

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Court : Karnataka

Decided On : Nov-04-2024

Judge : K.S.Mudagal,Vijaykumar a. Patil

Appeal No. : MFA/797/2019

Appellant : The Divisional Controller

Respondent : Ramesh

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2024 PRESENT THE HON'BLE MRS. JUSTICE K.S.MUDAGAL AND THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL MISCELLANEOUS FIRST APPEAL NO.797/2019 (MV-D) C/W MISCELLANEOUS FIRST APPEAL NO.1755/2023 (MV-D) MFA CROSS OBJECTION NO.51/2019 (MV-D) IN M.F.A. No.797/2019 BETWEEN: THE DIVISIONAL CONTROLLER K.S.R.T.C. HASSAN DIVISION HASSAN K.S.R.T.C. BUS NO.KA-13-F-1620 NOW THROUGH CHIEF LAW OFFICER KSRTC, BANGALORE. APPELLANT (BY SRI. K. NAGARAJA, ADV.,)

Digitally AND: signed by K S RENUKAMBA 1. RAMESH Location: S/O KARIYAPPA High Court of Karnataka SINCE DEAD BY HIS LRS.

2. SMT. SUSHILA W/O LATE RAMESH AGED ABOUT 42 YEARS OCC: COOLI.

3. KUMARI. MAHALAKSHMI D/O LATE RAMESH AGED ABOUT 25 YEARS.

4. KUMARI. SHRUTHI D/O LATE RAMESH AGED ABOUT 24 YEARS. -
2- ALL ARE R/O. AMBEDKAR NAGARA KADUR, CHIKKAMAGALUR DISTRICT.

5. KHAJASAB TAKKALAKI S/O NABI SAB BADGE NO.10212 A/P BIDARKUNDI MUDDEBIHAL TALUK BIJAPUR DISTRICT 586212 DRIVER OF K.S.R.T.C. BUS NO.KA-13-F-1620 HASSAN DIVISION. RESPONDENTS (BY SRI. B.P. SWAMY, ADV., FOR R2 TO R4 V/O DTD:19.6.2024 NOTICE TO R5 IS D/W) THIS MFA IS FILED U/S 173(1) OF MV ACT, PRAYING TO SET

ASIDE THE JUDGMENT AND AWARD PASSED BY THE COURT OF THE SENIOR CIVIL JUDGE AND MACT AT KADUR, CHIKKAMAGALUR DISTRICT IN MVC NO.112/2013 DATED 03.11.2018 & ETC. IN M.F.A. NO.1755/2023 BETWEEN: THE DEPOT MANAGER KARNATAKA STATE ROAD TRANSPORT CORPORATION KADUR DEPOT REPRESENTED BY ITS CHIEF LAW OFFICER. ...APPELLANT (BY SMT. H.R. RENUKA, ADV.,) AND:

1. ASHA W/O LATE SRINIVAS AGED 28 YEARS.

2. SUCHITRA D/O LATE SRINIVAS AGED MINOR.

3. PUSHPALATHA D/O LATE SRINIVAS AGED MINOR. -3-

RESPONDENT NOS.2 & 3 ARE MINORS REPRESENTED BY THEIR MOTHER AND NATURAL GUARDIAN RESPONDENT NO.1. ALL R/AT.

AMBEDKARNAGAR KADUR TALUK CHIKKAMAGALUR DISTRICT-577
548. ...RESPONDENTS (BY SRI. HARSHA G, ADV., FOR SRI. B.S.
SACHIN, ADV., FOR R1 TO R3 R2 & R3 ARE MINORS
REPRESENTED BY R1) THIS MFA IS FILED U/S 173(1) OF MV ACT,
PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE
JUDGMENT AND AWARD DATED 10.08.2022 IN MVC NO.63/2013
PASSED BY THE SENIOR CIVIL JUDGE AND MOTOR ACCIDENTS
CLAIMS TRIBUNAL, KADUR AND CONSEQUENTLY DISMISS THE
CLAIM PETITION IN THE INTEREST OF JUSTICE AND EQUITY. IN
M.F.A. CROB NO.51/2019 BETWEEN:

1. RAMESH S/O KARIYAPPA AGED ABOUT 45 YEARS SINCE DEAD
BY HIS LRS.

2. SMT. SUSHEELA W/O LATE RAMESH AGED ABOUT 36 YEARS
COOLIE.

3. KUMARI. MAHALAKSHMI D/O LATE RAMESH AGED ABOUT 24
YEARS.

4. KUMARI. SHRUTHI D/O LATE RAMESH AGED ABOUT 23 YEARS.
ALL ARE R/O. AMBEDKAR NAGARA KADUR TOWN CHIKMAGALURU
DISTRICT. ...CROSS OBJECTORS (BY SRI. B.P. SWAMY, ADV.,) -4-
AND: THE DIVISIONAL CONTROLLER KARNATAKA STATE ROAD
TRANSPORT CORPORATION HASSAN DIVISION THROUGH CHIEF
LAW OFFICER KSRTC, BANGALORE. ...RESPONDENT (BY SRI. K.
NAGARAJA, ADV.,) THIS MFA CROB IN MFA NO.797/19 FILED U/O 41
RULE 22 OF

CPC R/W SECTION 173(1) OF MV ACT, PRAYING TO ALLOW THIS
CROSS APPEAL AND SET ASIDE THE JUDGMENT AND AWARD
PASSED BY THE SENIOR CIVIL JUDGE AND MOTOR ACCIDENT
CLAIM TRIBUNAL AT KADUR IN MVC NO.112/2013 DATED
03.11.2018 AND PLEASED TO ENHANCE THE COMPENSATION AS

THIS HON'BLE COURT DEEMS FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY. THESE APPEALS CONNECTED WITH MFA CROB, COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MRS. JUSTICE K.S.MUDAGAL and

HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL JUDGMENT

(PER: HON'BLE MRS. JUSTICE K.S.MUDAGAL) MFA No.797/2019 & MFA Crob.No.51/2019 arise out of the award passed in MVC No.112/2013 on the file of the Senior Civil Judge and MACT, Kadur, Chikkamagalur District. MFA No.1755/2023 arises out of the award passed in MVC No.63/2013 on the file of the Senior Civil Judge and MACT, Kadur, Chikkamagalur District. -5-

2. Both the matters arise out of the same accident which took place on 29.11.2012 at 11:00a.m. near Devanoor Gate, NH-206, Kadur Taluk, Chikkamagalur District, between

the KSRTC bus bearing Reg.No.KA-13-F-1620 and the motorcycle bearing Reg.No.KA-18-V-6626. Since the common questions of law and facts are involved in both the appeals on the point of negligence, they are taken together for disposal by this common order.

3. The claimants in MVC No.63/2013 are the legal representatives of deceased K.Srinivasa. The claimants in MVC No.112/2013 are the legal representatives of deceased Muthu @ Muthuraj.

4. On 29.11.2012 at 11.00a.m. Muthu & K.Srinivasa

were traveling on motorcycle No.KA-18-V-6626. K.Srinivasa was the rider and Muthu was the pillion rider of the vehicle. The said motorcycle met with an accident involving KSRTC Bus No.KA-13-F-1620 near Devanoor gate as aforesaid. In the accident both K.Srinivasa & Muthu suffered fatal injuries and

succumbed to the injuries at the spot itself.

5. The legal representatives of Muthu & K.Srinivasa filed MVC Nos.112/2013 & 63/2013 respectively against the -6-

respondents i.e., driver and Divisional Controller/Depot Manager of KSRTC Bus claiming that the accident occurred due to the actionable negligence on the part of the driver of the

bus, they were the dependants of deceased Muthu & K.Srinivasa. They further claimed that due to untimely death of those two victims, they have suffered damages. The claimants in MVC No.63/2013 claimed compensation of Rs.50,00,000/-. The claimants in MVC No.112/2013 claimed compensation of Rs.40,55,000/- from the respondents. In both the cases the

respondents contested the petition denying actionable negligence on the part of the driver of the bus, age, occupation and income of the deceased and their liability to pay the compensation.

6. In MVC No.112/2013 claimant No.2 Smt.Susheela

was examined as PW-1 and one K.S.Shankar, the alleged eye- witness was examined as PW-2 and exhibits P-1 to P-16 were got marked. One Veeranna Chittavadige, the alleged eye- witness was examined on behalf of the respondents as RW-1 and exhibits R-1 to R-7 were got marked. The Tribunal on hearing the parties in MVC No.112/2013 held that the accident occurred solely due to the negligence on the part of the rider of

-7- the motorcycle and awarded compensation of Rs.8,55,000/- under different heads as follows:

1. Loss of dependency: Rs.8,10,000/-

2. Loss of love and affection: Rs. 25,000/-

3. Funeral expenses: Rs. 15,000/-

4. Transportation of dead body: Rs. 5,000/- Total: Rs.8,55,000/-

7. KSRTC has challenged the said award in MFA No.797/2019 questioning the negligence as well as the quantum of compensation. The claimants of the said case filed MFA Crob.No.51/2019 questioning the adequacy of the compensation awarded.

8. In MVC No.63/2013 on behalf of the claimants PWs-

1 to 3 were examined and Exs.P-1 to P-7 were got marked. Respondent No.1/driver in the said bus was examined as RW-1 and Exs.R-1 to R-11 were got marked. The Tribunal by

judgment dated 04.08.2018 holding that the accident occurred

due to the negligence of the driver of the bus No.KA-13-F-1620 awarded the compensation of Rs.15,22,672/- under different heads. The said award was challenged before this Court by both the claimants and respondents in MFA No.2410/2019 c/w MFA -8-

No.8811/2018(MV). The coordinate bench of this Court, on hearing the parties, allowed the case of KSRTC and remanded the matter to the Tribunal for reconsideration after giving opportunity to the parties. After such remand, the parties did not adduce any further evidence. The Tribunal on hearing the parties by its judgment and award dated 10.08.2022 held that both the rider of the motorcycle - K.Srinivasa and driver of KSRTC bus contributed negligence in the ratio of 60:40 respectively in the occurrence of the accident. The Tribunal awarded compensation of Rs.11,08,448/-. Challenging that judgment, KSRTC has preferred MFA No.1755/2023.

9. Smt.H.R.Renuka and Sri.K.Nagaraja, learned

standing counsel for KSRTC submit that the claimants' own records, charge sheet and other records as well as the evidence led by the respondent - KSRTC show that K.Srinivasa, the rider of the motorcycle himself was sole cause for the accident and due to his negligence the accident occurred. They submit that

despite KSRTC taking a specific contention that the owner and insurer of said vehicle are necessary parties, the claimants did not implead them as parties to the petition, therefore, petition should have been dismissed for non joinder of necessary

-9-

parties. They further submit that since the driver of KSRTC bus was not at all responsible for the accident, passing of award against KSRTC is perverse. They submit that there are material contradictions in the judgments. Therefore, impugned awards suffer perversity. The compensation assessed on all the heads is also on the higher side.

10. Sri.Harsha G, learned counsel for the claimants in

MFA No.1755/2023 (MVC No.63/2013) submit that though the claimants were not the eye-witnesses, they have examined the eye-witness to the incident, who clearly stated that the driver of KSRTC bus was rash and negligent and accident occurred due to his negligence. Therefore, the charge sheet alone cannot be relied to hold that the rider of the motorcycle K.Srinivasa was negligent.

11. Sri.B.P.Swamy, learned counsel for the cross- objector in MFA Crob.No.51/2019 which arises out of MFA No.797/2019 submits that the finding of the Tribunal on the

contributory negligence is erroneous and compensation awarded is also on the lower side. They submit that the vehicle was owned by Sri.K.Srinivasa, rider, since he died the claimants could not implead him. - 10 -

12. On hearing the submissions of both side and on examination of the material on record, the points that arise for determination are :

i. Whether the finding of the Tribunal that the accident occurred due to negligence of driver of KSRTC bus No.KA-13-F-1620 is sustainable? ii. Whether the compensation awarded in MVC No.63/2013 is just one? iii. Whether the compensation awarded in MVC No.112/2013 is just one? ANALYSIS

13. None of the parties dispute that on 29.11.2012 at

11.00 a.m. near Devanoor gate the unfortunate accident took place involving KSRTC bus bearing No.KA-13-F-1620 and the motorcycle bearing No.KA-18-V-6626. But the only question is whether the accident occurred due to negligence on the part of the driver of the KSRTC bus or Sri.K.Srinivas, rider of the motorcycle, or there was any contributory negligence on the part of both of them.

14. The burden of proving that the accident occurred due to the actionable negligence on the part of the driver of - 11 -

KSRTC bus was on the claimants. The claimants in MVC No.112/2013 to prove that fact relied on the FIR, complaint, spot mahazar, inquest reports and charge sheet. Though the claimants in MVC No.63/2013 produced the FIR, complaint, spot mahazar, inquest mahazar, they did not choose to produce the copy of the charge sheet. Indisputably the charge sheet was filed against K.Srinivasa, the rider of motorcycle, saying that the accident occurred solely due to his negligence. Further,

Ex.R-4, sketch of scene of offence produced in MVC No.63/2013 by KSRTC, shows that the bus was proceeding on its extreme left side and the motorcycle came from the opposite direction on totally wrong side i.e., towards extreme right side. The sketch and spot mahazar both show that to avoid the accident, the driver of the bus tried to avert the accident and proceeded on his extreme left side, still the motorcycle hit the bus, the bus driver had applied the brake and there were brake marks shown in the sketch and ultimately the bus went into a coconut grove and stopped there. The motor vehicle inspector's report and photographs produced by the respondent-KSRTC show that the bus was damaged on its right front side.

- 12 -

15. In MVC No.63/2013, the driver of the bus in

question was examined as RW-1, in MVC No.112/2013 the conductor of the bus in question was examined as RW-1 by the KSRTC. Their evidence that the rider of

the motorcycle himself was rash and negligent and was the sole cause for accident was

corroborated by the charge sheet, sketch of scene of occurrence, IMV report and spot mahazar. Therefore, their evidence could not be impeached. The alleged eye-witness PW- 2 in MVC No.112/2013, though contended that he witnessed the accident and the driver of bus was responsible for the accident, on thorough investigation, the charge sheet was filed only against the rider of the motorcycle. The Hon'ble Supreme Court in the judgment in Oriental Insurance Company Ltd. v. Premlata Shukla & Others¹ has held that when the parties produce the document and rely on the same, the entire document stands proved, the party cannot seek to approbate and reprobate simultaneously. It was held that party bringing the same on record cannot be permitted to turn around and contend that other contents contained in the rest part thereof had not been proved. The said judgment clearly

(2007) 13 SCC 476 - 13 -

covers this case. Having produced the charge sheet, the claimants cannot contend that the same should not be relied. Further the charge sheet was corroborated by other evidence as discussed above.

16. It is material to note that the Tribunal in MVC

No.112/2013 though in para 11 of its judgment holds that K.Srinivas rider of the motorcycle was solely responsible for the accident, records the finding that KSRTC bus was responsible for the accident which is thorough perversity. Even in MVC No.63/2013, the finding on negligence is contrary to the evidence on record and unsustainable.

Reg quantum:

17. Since in both the cases it is held that accident

occurred solely due to the negligence of K.Srinivas, the rider of the motorcycle, the claimants in MVC No.63/2013 who are his legal representatives are not entitled to claim compensation for the negligence of tort feisor himself. Further in MVC

No.112/2013 despite KSRTC taking a specific stand that petition was not maintainable without impleading the owner and insurance company of motorcycle, till this day they were not impleaded in the case. Since the driver of KSRTC bus was - 14 - not at fault, they cannot maintain any claim against them. Since they have not impleaded the owner and insurance company of the motorcycle of KA-18-V-6626 their petition has to be dismissed.

18. In view of the aforesaid finding of this Court on the

point of negligence and the aforesaid discussions, both the claim petitions are liable to be dismissed. Consequently, MFA Nos.1755/2023 & MFA No.797/2019 deserve to be allowed and MFA Crob.No.51/2019 is liable to be dismissed. Hence, the following:

ORDER

i. MFA No.1755/2023 and MFA No.797/2019 are allowed. ii. MFA Crob.No.51/2019 in MFA No.797/2019 is hereby dismissed. iii. The impugned award in MVC No.63/2013 & MVC No.112/2013 on the file of Senior Civil Judge and MACT, Kadur, Chikkamagalur District are hereby set aside. MVC No.63/2013 & MVC No.112/2013 are hereby dismissed. iv. The amount deposited, if any, by the appellant-KSRTC shall be refunded to them. - 15 -

v. In view of allowing of MFA No.797/2019, I.A.No.1/2024 seeking withdrawal of the deposited amount in the said appeal does not sustain. I.A.No.1/2024 is rejected accordingly. vi. No order as to costs. Sd/- (K.S.MUDAGAL) JUDGE Sd/- (VIJAYKUMAR A. PATIL) JUDGE BSR List No.: 1 Sl No.: 35

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