

Basappa and anr. Vs. K.H. Sreenivasa Reddy and ors.

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Court : Karnataka

Decided On : Jun-19-1981

Reported in : AIR1982Kant30; [1983]54CompCas291a(Kar); ILR1981KAR1324

Judge : G.N. Sabhahit and ;P.A. Kulkarni, JJ.

Acts : [Motor Vehicles Act 1939](#) - Sections 110-A and 110-A(3); [Code of Civil Procedure \(CPC\), 1908](#); [Limitation Act, 1963](#) - Sections 21 (1)

Appeal No. : Misc. First Appeal Nos. 259 and 260 of 1980

Appellant : Basappa and anr.

Respondent : K.H. Sreenivasa Reddy and ors.

Advocate for Def. : T.R. Rangaraju, ;B.V. Acharya and ;C. M. Desai, Advs.

Advocate for Pet/Ap. : S. Vijayashankar, Adv.

Judgement :

Sabahit, J.

1. These two appeals arise out of a common judgment and awards dated 7-12-1978 passed by the Member, Motor Accidents Claims Tribunal, Chickmangalur in (MVC) Cases Nos. 6 and 9 of 1978, on his file, dismissing the two petitions.

2. The deceased in Miscellaneous (MVQ Case No. 6 of 1978 and the injured in Miscellaneous (MVC) Case No. 9 of 1978 Were traveling on 17-8-1977 at about 2.00 P. M. in bus bearing Registration No. MYS 6418 belonging to respondent 1 and driven by respondent 2 in the petition. When the bus was going on its proper side, a 'KSRTC' bus dashed against the said bus as a result of which Smt. Sharadamma and Shri Malleshappa, the passengers in the private bus, sustained injuries. Smt. Sharadamma died as a result of the injuries sustained. Shri Malleshappa, the injured, sustained fracture of the right collar bone. The husband of deceased Smt. Sharadamma instituted Miscellaneous (MVQ Case, No. 6 of 1978 claiming compensation of Rs. 50,000/- from the respondents viz., the owner, the driver and the insurer of the private bus. Similarly, the injured person viz., Shri Malleshappa, claimed compensation of Rs. 55,000/- from the same respondents.

3. The original respondents resisted the claim and submitted that the negligence was not proved on the part of the driver of the private bus but it was the 'KSRTC' bus that came and dashed against the private bus and, as such, the accident was the result of the rash and negligent driving of the 'KSRTC' bus by its driver. Subsequently, the driver and the owner of the 'KSRTC' bus were made as parties viz., respondents 4 and 5. They also filed their written statement denying their liability.

4. The Tribunal raised the following issues as arising from the pleadings in M. C. (MVC) No. 6 of 1978:

(1) Whether the petitioner proves that Sharadamma died on 17-8-1977 at about 2.00 P. M. on account of the rash and negligent driving of the bus bearing Registration No. MYS, 6418 near the Easton Toll Gate on B. H. Road at Tarikere?

(2) Whether respondents 1 and 2 prove that the accident was due to the rash and negligent driving of the bus bearing Registration No MYF 4789 by one Siddappa and dashing against the bus bearing Registration No. MYS 6418, which was parked, near Kodi Camp, on B. H. Road at Tarikere?

(3) To what compensation and from whom the petitioner is entitled?

The following additional issues were also raised by the Tribunal:

(I) Is the claim against 'KSRTC' not maintainable for reasons stated in para 2 of the objection statement filed by additional respondent 2 ?

(2) Is the claim barred by limitation against the said respondent ?

5. The Tribunal raised the following issues as, arising from the pleadings in M. C. (MVC No. 9 of - 1978:

(1) Whether the petitioner proves that he sustained fracture of the right hand due to the rash and negligent driving of the bus bearing Registration No. MYS 6418 by respondent 1 on 17-8-1977 at about 2.00 P. M. near the Pastern Toll Gate on B. H. Road at Tariksre and dashing it against the 'KSRTC` bus?

(2) Whether respondents 1 and 2 prove that the accident occurred on account of the rash and negligent driving of the bus bearing Registration No. MYF 4789 by one Siddappa and dashing against the bus MYS 6418 which was parked near Kodi Camp on B. H. Road, Tarikere Town ?

(3) To what compensation and from whom the petitioner is entitled to ?

The following additional issues were also raised by the Tribunal :

(1) Is the claim against respondent 2 'KSRTC not maintainable for reasons stated in para 2 of the objection statement of the said respondent ?

(2) Is the claim against the said respondent barred by time ?

6. Both the claim petitions were heard together as the claims arose from the same accident and the Tribunal recorded evidence and proceeded to pass a common Judgment.

7. During hearing, the claimants examined P. Ws. 1 to 4 and got marked Exhibits P-1 to P-3. No evidence was adduced on behalf of the respondents.

8. The Tribunal, appreciating the evidence on record, hold that, the accident was the result of the rash and negligent driving of the 'KSRTC' bus by its driver. But

since the owner and the driver of the 'KSRTC' bus were not added 'in the first instance, it proceeded to dismiss the claims in the two claim petitions as barred by time. Aggrieved by the said common judgment, the present appeals are filed by the claimants.

9. The learned Counsel appearing for the claimants strenuously urged that the Claims Tribunal could not dismiss the petitions having held that the 'KSRTC' bus driver was responsible for the accident by driving the said bus in a rash and negligent manner. He submitted that compensation should have been awarded against the owner and the driver of the, 'KSRTC' bus.

10. As against that, the learned counsel appearing for the contending respondents argued supporting the judgment passed by the Tribunal:

11. The points, therefore, that arise for our consideration in these appeals are:

(1) Whether the Tribunal was justified in holding that compensation could not be awarded against the owner and the driver of the 'KSRTC' bus because they were not added in the original petition and compensation was not claimed against them?

(2) Whether the Tribunal was justified in holding that the claim against the owner and the driver of the 'KSRTC' bus -was barred by limitation as they were added later on?

(3) If not, what is the compensation to which the claimants are entitled?

12. In Para 10 of the judgment, the Tribunal has observed thus :

'... . . . It is clear that the evidence adduced by the petitioners is in direct conflict with the allegations contained in the petition regarding the manner in which the accident occurred in that according to the allegations in the petition. The accident was due to rash and negligent driving of the bus. MYS 6418 by the second respondent and dashing against K. S. R. T. C. bus that was coming from the opposite direction, while the evidence adduced is to the effect that the K. S. R. T. C. bus that came from the opposite direction, came in speed and dashed against

Reddy bus that was going on the left side of the road. Thus, in view of this variance between the pleading and proof, it is not possible to hold that the petitioners have established that there was rashness or negligence on the part of the second respondent in driving the vehicle at the material place, and the rash and negligent act, of the second respondent was responsible for causing the death of Sharadamma and PW 4 Malleshappa sustaining fracture of the right hand. Hence my finding on these two issues is in the negative.'

Again, in para 12 of the judgment, the Tribunal has observed thus:

'Under this issue, the point that arises for consideration is: Whether the petition is not maintainable against respondents 4 and 5. The contention, of respondents 4 and 5 is that even according to the allegations in the petition filed by the petitioners, the accident was due to the rash and negligent driving of the bus by the second respondent and the said bus colliding with K. S. R. T. C. bus and, therefore, the Petitions claiming compensation are not maintainable against respondents 4 and 5. In view of the specific allegations contained in the petitions that the accident Sharadamma on account of the rash and negligent driving of the bus MYS 6418 by the second respondent and dashing against the K.S.R.T.C. bus that was coming from the opposite direction, the contention of respondents 4 and 5 that the petitions are not maintainable against them is well-founded..

Again, in Para 13 of the judgment, the Tribunal has observed thus: Hence, the petitions filed beyond the prescribed period of six months against respondents 4 and 5 are clearly barred by limitation.'

13. The learned Member of the Claims Tribunal refers to the application for impleading respondents 4 and 5 viz., the owner and the driver of the 'KSRTC' bus in question. The claim petitions were disallowed by the Tribunal on the grounds that in the petitions the claimants averred that the accident was due to the rash and negligent driving of Reddy bus bearing Registration No: MYS 6418, but there was variance in pleading and proof inasmuch as the evidence adduced was in proof of the fact that actionable negligence was on the part of the driver of the KSRTC bus and that the application for impleading respondents 4 and 5 was given beyond the prescribed time and further that no sufficient explanation was

offered for condoning the delay.

14. We shall first advert to the first ground on which the Tribunal proceeded to dismiss the petitions viz., there is variance between pleading and proof. This court in an old case reported in the case of Seethamma v. Benedict D'Sa. (AIR 1967 Mys 11) criticised the form prescribed for claiming compensation and observed (at P. 13):

'... .. so the prescribed form is a poor substitute for a Plaint and there can be no rational reason for insistence on a pleading through its columns. A claim for compensation for death or injury which should be supported by a statement and proof of facts which create a right to it, should be allowed to be made through a properly prepared pleading such as a plaint produced before the ordinary Courts, and, not through the obscure columns of an imperfect form such as the one prescribed by the Rules'

15. Therefore, it is obvious that the strict Rules of Pleading contained in the Civil P. C. cannot be invoked while considering a claim petition. The petition is not a plaint. It does not provide for 'Prayer' in a separate column. Hence, there is no rational basis to apply the doctrine of variance between pleadings and proof.

16. This Court, in a Division Bench decision, in the case of M. Krishnappa v. Madras Motor and General Insurance Co., (1971) 1 Mys LJ 86 has further observed thus:

'The form prescribed under the Motor Vehicles Rules for a claim to the Tribunal appears inadequate and misleading. The form does not provide for different heads in respect of which compensation is claimable.....'

Therefore, the form should not be treated like a plaint and if any claim for compensation has been made, it is for the Tribunal to find out what compensation should be awarded on all heads for which the opposite party is responsible.'

17. This Court relied upon approvingly on a decision of the Bombay High Court rendered by a Division Bench, in the case of Bessarlal Laxmichand v. Motor Accidents Claims Tribunal, Greater Bombay, : AIR1970 Bom337 . In that case,

analysing the relevant sections, their Lordships have observed that it is for the Tribunal to find out the names of the relevant parties and issue notices to them and that the proceeding before the Tribunal cannot be treated as a suit before a regularly constituted Civil Court. Thus, the Tribunal was not justified in applying the strict procedure and Rules of Pleadings applicable to a suit in considering the claim petitions,

18. Besides it is for the Tribunal to find out actionable negligence on the part of a particular respondent. The opinion of a claimant is not decisive of the fact. The Tribunal has to appreciate the entire evidence on record' and has to come to the conclusion as to who is negligent. The finding on negligence has to be given by the Court and not by a party or a witness. The opinion of a party or a witness in that behalf has no legal relevance. It is the finding of the Tribunal on appreciation of evidence that becomes decisive. Respondents 4 and 5 were given opportunity to contest and it is on full hearing that the Tribunal has recorded its finding.

19. In the instant cases, the claimants have added respondents 4 and 5 after the objection statement of original respondents 1 to 3 was filed as they took up the contention that the negligence was on the part of the driver of the 'KSRTC' bus and, thereafter, the owner and the driver of the 'KSRTC' bus filed their objection statement and they have participated in the proceeding. A specific issue is raised by the Tribunal in that behalf. Appreciating the entire evidence on record adduced both by the claimants as also by the, respondents, the Tribunal has recorded its finding that the negligence in causing the accident was on the part of the driver of the 'KSRTC' bus. Hence, the Tribunal ought to have pursued its own finding and given relief to the claimants on the basis of its own finding about actionable negligence.

20. There is no substance in the contention that respondents 4 and 5 were added as parties beyond the period. of limitation. Limitation is prescribed for instituting a petition. When once the petition is instituted in time with some of the relevant parties, addition of necessary parties could be made later. Besides, under the Rules, it is the duty of the Tribunal to add and issue notices to necessary parties, (vide : R. 346).

21. In fact, the Bombay decision, which is approved in the aforesaid decision of this Court, as cited earlier, would clearly show that the responsibility lies on the Tribunal to add the necessary parties after making necessary investigation. That being so, the Tribunal was not correct in saying that respondents 4 and 5 were added beyond the period of limitation and hence, the claim against them was barred by time.

22. Moreover, under proviso to sub-section (1) of Section 21 of the Limitation Act (1963), Court has the power to direct that the suit as regards newly added defendants shall be -deemed to have been instituted' on an earlier date within time. The proviso reads:

'Provided that where the Court is satisfied that the omission to include a new Plaintiff or defendant was due to a mistake made in good faith, it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.'

23. Normally, as stated in Section 21(1) of the Limitation Act (1963), suit against a newly added party should be deemed to have been instituted as on the date of his being added; proviso speaks of an exception.

24. The facts of the present cases would bring the adding of respondents 4 and 5 obviously under the proviso as their not adding earlier was manifestly due, to a mistaken belief in good faith that actionable negligence was on the part of the driver of the Reddy Bus; and, hence, The Tribunal ought to have held that the claim against them was deemed to be within time.

25. The Tribunal, moreover, has the power to condone the delay even if it is to be construed that they should have been added within six months. The claimants bona fide believed that the accident was the result of rash and negligent driving of the Reddy Bus by its driver. In that view, they did not add the owner and the driver of the 'KSRTC' bus. But, when the owner and the driver of the said Reddy bus took up the contention that it was the driver of the 'KSRTC' bus who was rash and negligent and it was he who was responsible for causing the accident, they immediately applied for adding the owner and the driver of the 'KSRTC bus, giving

reasons to condone the delay. In the circumstances, it was the duty of the Tribunal to condone the delay, if any, In adding respondents 4 and 5 as parties.

26. In the instant cases, the Tribunal has allowed respondents 4 and 5 to be made as parties, has taken their objection statement, has allowed them to adduce evidence and it is only at the time of writing the judgment that it has thought that their addition as parties was barred by time, which, is rather a strange procedure adopted by the Tribunal.

27. In the circumstances, we are unable to bring ourselves to agree with the finding of the Tribunal that the claim against respondents 4 and 5 is barred by time. That being so, we, are constrained to hold that compensation to the claimants has to be awarded against respondents 4 and 5.

28. That leads us to the question of quantum of compensation to which the claimants in each case are entitled. We will first advert to Miscellaneous (MVC) Case No. 6 of 1978 in which the husband of Sharadamma has claimed compensation for the death of Sharadamma in the accident. Sharadamma was aged about 24 years at the time of her death by accident. It is further in evidence that she was pregnant. As she was killed in the accident, the husband lost the services of his wife, lost consortium and has claimed compensation of Rs. 50,000/- . It is also in evidence that by the time the petition came up for evidence, the husband of the said Sharadamma had re-married in May 1978. Therefore, .it was submitted before us that the question of loss of consortium and loss of services of the wife, are no longer available to the claimant. It is, however, on record that deceased Sharadamma has left behind her, two minor children. It may be that the husband has got another wife; but the children cannot have another mother. They would, after all, have a stepmother and the treatment by a step-mother has become proverbial in Hindu Society. Therefore, it would be necessary for the husband to make arrangements for the proper care and protection of his minor children by engaging the services of at least a maid till the children attain the age of discretion. Therefore, the husband would be entitled to' compensation for the loss of consortium for about ten months till he re-married and he would also be entitled for compensation for the amount that he is likely to spend for the care and

protection of the minor children of, deceased Sharadamma. Having regard to these, we think it proper to award compensation of Rs. 10,000/-. He is also entitled for compensation for the loss to the estate of the deceased at Rs. 5,000/-. Together, therefore, we hold that the claimant is entitled for compensation of Rs. 15,000/-, together with interest thereon at 6% per annum. from the date of petition till payment. Hence, Miscellaneous First Appeal No. 259 of 1980 is entitled to succeed in part.

29. Adverting now to the claim made in Miscellaneous (MVC) Case No. 9 of 1978, it is on record that the injured/claimant suffered fracture of the right collar bone. The Doctor in the case is not examined. The claimant has stated as a witness before the Tribunal that he is not able to freely move his right hand and write on the black-board. He is a Teacher by profession. The evidence shows that his services are continued. Hence, there is no substance in his say that he cannot write in the black-board. Since there is no evidence of the Doctor about any disability, compensation has to be awarded only for pain and suffering. Having regard to the nature of the injury and pain and agony suffered, we deem it just and proper to award him Rs. 3,000/- instead of Rs. 1,500/- as proposed by the Tribunal.

30. In the result, therefore, Miscellaneous First Appeal No. 259 of 1980 is partly allowed. The claimant is awarded Rs. 15000/- along with interest at 6% per annum from the date of petition till payment as also the costs of the proceedings throughout from aspondents 4 and 5 who shall pay the same to him.

31. Miscellaneous First Appeal No. 260 of 1980 is also partly allowed. The compensation proposed by the Tribunal at Rs. 1,500/- is enhanced to Rs. 3,000/- and we award the same to the claimant, along with interest at 6% per annum from the date of petition till payment as also the costs of the proceedings throughout from respondents 4 and 5.

32. ordered accordingly.