M. Subramanya Bhat Vs. Govindaraj and ors.

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Court : Karnataka

Decided On : May-31-1978

Reported in : [1982]52CompCas609(Kar)

Judge : G.N. Sabhahit and ;K. Bhimiah, JJ.

Acts : Motor Vehicles Act, 1939 - Sections 110, 110A, 110B and 110D; Evidence Act, 1872 - Sections 3

Appeal No. : Miscellaneous First Appeal No. 404 of 1976

Appellant : M. Subramanya Bhat

Respondent : Govindaraj and ors.

Advocate for Def. : D. Cheluvaraj, Adv.

Advocate for Pet/Ap. : K. Shivashankar Bhat, Adv.

Judgement :

Sabhahit, J.

1. This is a claimant's appeal instituted under s. 110D of the Motor Vehicles Act, 1939 (to be hereinafter referred to as the 'Act') against the judgment and award dated January 19, 1976, in M.C. (MVC) No. 106 of 1974 passed by the Claims Tribunal, Mangalore, dismissing the petition for payment of compensation for the injury sustained by the appellant in a motor accident.

2. It is the case of the claimant that when he was going on the right side of the road near Jyothi Garage, Bunder, Mangalore, at about 2.30 p.m. on April 22, 1974, a lorry bearing No. MYG 5704 came from the opposite direction driven in a rash and negligent manner and caused the accident resulting in injuries to his left foot and left side ribs. Thus, he alleged that the accident was the result of rash and negligent driving of the lorry and claimed compensation of Rs. 50,000 from respondents.

3. Respondent-1 is the owner; respondent-2 is the driver of the lorry and respondent-3 is the insurer of the lorry. Respondents 1 and 2 did not contest the claim. Respondent-3 by its statement of objections contended that the driver of the lorry bearing No. MYG 5704 did not hold a valid licence to drive at the time of the accident. So. the insurance company was not liable to pay the damages.

4. During the hearing, the claimant examined five witness including himself. As against that the insurance company examined one witness, viz., RW 1 S. D. Ballal, The

Manager of the national Insurance Company, Mangalore Branch. The Tribunal after appreciating the evidence on record held that the claimant failed to prove that it was the lorry MYG 5704 that caused the accident had as such dismissed the claim of the petitioner by its judgment dated January 19, 1976.

5. Aggrieved by the said judgment, the claimant has came up in appeal before this court.

6. The learned advocate appearing for the appellant, vehemently contended that there was no dispute whatsoever that it was the lorry MUG 5704 that caused the accident, that the insurance company failed to establish that the driver who was driving the vehicle at the time had no licence to drive and that the evidence on record was sufficient to hold that the accident was the result of actionable negligence on the part of the driver of the lorry and as such the Tribunal ought to have awarded compensation to the claimant.

7. The learned counsel for the 3rd respondent, insurance company, submitted his arguments supporting the reasoning of the Tribunal in dismissing the petition.

8. The points, therefore, that arise for out consideration :

(1) Whether the Tribunal was justified in holding that the identity of the lorry which caused the accident was not established

(2) If not, what is the quantum of compensation to which the appellant is entitled

(3) What order

9. The petitioner has averred in the petition that it was the lorry bearing No. MYG 5704 which came from the opposite direction driven in a rash and negligent manner which caused the accident. Both the owner as well as the driver of the lorry were added as respondents in the petition. Neither the owner nor the driver entered appearance to contest the averments made. The insurance company also in its statement of objection did not challenge that it was the lorry bearing No. MYG 5704 which caused the accident. In fact, in para. 7 of the statement of objections, this is what the insurance company has stated :

'Without prejudice to the foregoing, it is submitted that the driver of the goods vehicle bearing registration mark MYG 5704 did not hold a valid driving licence to drive the said vehicle at the time of the alleged accident .....'

10. Thus, even the insurance company in its statement of objections admitted that it was the lorry bearing No. MYG 5704 that caused the accident. That question was not thus agitated before the Tribunal at all. In the pleadings, the parties are not at issue that it was the lorry bearing No. MYG 5704 which caused the accident. That being so, the length discussion of the Tribunal on the identity of the lorry in question is de hors the matters in issue. Even otherwise, the evidence on record clearly establishes that it was the driver of the lorry being registration No. MYG 5704 who caused the accident. This fact is established by the evidence of P.W. 4 Jayananda, Proprietor of Jyothi Garage. During the course of his evidence PW 4 has stated thus :

'The lorry hit the left side hip of PW 1. PW 1 fell down. The lorry then went ahead for

20 feet and stopped. People collected. He had lost consciousness .... The lorry No. was MYG 5704.'

11. In the cross-examination, there is not a whisper challenging the averment made by the witness in his chief-examination. All that is put to him in this :

'It is not true to say that no lorry hit PW 1.'

12. That being so, it is obvious that the evidence on record also adequately establishes that it was the lorry bearing No. MYG 5704 which caused the accident. The learned member of the Tribunal, therefore, was clearly in error in coming to the conclusion that the identity of the lorry was not established by the claimant.

13. It may next be pointed out that the Tribunal has given a definite finding that the accident was the result of the rash and negligent driving of the lorry. This is what the Tribunal has observed :

'In the instant case it must be said that PW 1 was knocked down by the vehicle due to the rash driving of the driver whoever it was.'

14. That being so, it becomes clear that the accident was the result of rash and negligent driving of the driver.

15. This finding of the Tribunal is supported by the evidence of PWs. 1 and 4. PW 1 in his evidence has stated thus :

'On April 22, 1974, Monday at about 2-30 P.M., I left my branch office at Bunder of Mangalore to go to take my lunch at Modern Hotel in Sayyaji Rao Road. Before that I wanted to go to the Jyothi Garage to take my car. I Came out of that garage at about 2.30 P.M. on foot as my car was taken away for some other purpose by my friend. Therefore, I had to go to the hotel on foot. I was going on the right side of the road which has a hedge fence on its both sides. I was going on the extreme right side leaving no part of the road on my right. A lorry came opposite to me and I raised my hand signaling to stop it as I was much frightened seeing the high speed in which it was coming. Immediately and within a few seconds the left front side of the lorry hit me on my left waist-violently and to avoid falling down I just held the hedge. The lorry might have been coming at a speed of about 25 miles per hour.'

16. There is no serious challenge to this portion of his evidence in the cross-examination. The cross examination is directed only in challenging the identity of the lorry. The evidence of the appellant (PW1) finds corroboration in the evidence of PW 4. As against this the driver of the lorry has not stepped into the witness box to give his version. Hence adverse inference has to be drawn against the respondents. In the instant case, therefore, we have no hesitation to hold that the accident was the result of the rash and negligent driving of the lorry No. MYG 5704.

17. This takes us to the quantum of compensation to which the claimant is entitled. The doctor, who treated the appellant (PW 1) was examined as PW 3. He has stated that the claimant suffered fracture of the 1st metatarsal bone and fracture of the eleventh rib on the left side. Plaster of Paris cast, was put on the left foot. He has further stated that adhesive strapping for the chest was for three weeks. The doctor has also further stated that in view of the fracture in the foot the injured was not able

to drive a vehicle for at least 7 or 8 months comfortably. The fracture of the rib took six to seven weeks to unite and till then he was not able to turn back. Till the fractures settled down or united the injured had to suffer pain.

18. Thus, it is clear that as a result of the accident, the claimant suffered fracture of the metatarsal bone and of the 11th rib. He had to undergo pain and suffering for nearly 7 to 8 months till he got completely cured. It is not in evidence that the injured was left with any permanent disability. Compensation has, therefore, to be awarded in this case, as general damages for pain and suffering the injury itself and loss of amenities.

19. Since there is no permanent disability as such, the damages will have to be mainly for suffering and loss of amenities. For about seven weeks the injured was not able to turn back and he was not able to drive the vehicle for nearly about eight months. He was in the hospital for about a week. Having regard to all these, it would be just and reasonable to award Rs. 4,000 as general damages for the injuries, pain and suffering and loss of amenities.

20. In addition, the claimant has asked for the reimbursement of medical expenses which amounts to Rs. 340. It is awarded. In addition it is in evidence that the doctor visited the injured four times. For each time he charged him Rs. 15 the total of which comes to Rs. 60. Together, the damages for medical treatment would amount to Rs. 400. The claimant has further stated that he was not able to drive his vehicle for eight months. Earlier he was driving the car himself and after the accident he had to engage a driver for the purpose. He has deposed that he was paying Rs. 120 per month, to the driver as salary. The driver himself is examined as PW 2. He has corroborated the evidence of the appellant (PW 1). The evidence of the doctor supports the evidence of the claimant. Even taking that the driver was in service for about seven months, the loss would be Rs. 120 X 7, i.e., Rs. 840. Thus, the claimant is entitled to Rs. 4,400 plus Rs. 840 : the total comes to Rs. 5,240 as global damages. We deem it proper to award the same.

21. It was contended by the learned advocate appearing for respondent-3, insurance company, that the company was not liable to pay the compensation, as the claimant did not prove the vehicle was driven at the time of accident by a driver having a valid license to drive. But it was rightly pointed out by the learned counsel for the appellant that it was for the insurance company to establish any breach of condition in the policy and that the burden was on the company top prove that the vehicle was driven by a driver without a valid licence at the time of accident.

22. This court in the case of S. Sanjeeva Shetty v. Anantha [1976] 1 Kar LJ 430, AIR 1976 Kar 146, has held that the burden of proving any breach in the conditions of policy alleged is on the insurance company. In the instant case, the insurance company has failed to discharge that burden. The only witness examined on behalf of the insurance company has stated that he did not know who the driver was that was driving the lorry at the time of the accident. He has further stated thus :

'Personally, I have not pursued any records pertaining to this case. I am not aware of the driver of the vehicle having been prosecuted at the Magistrate's Court at Mangalore.'

23. Hence, there is no substance in the contention raised on behalf of the insurance

company that company is not liable to pay compensation.

24. Before parting with the facts of this case, it is necessary to observe that the Claims Tribunal in the instant case has not given its findings on all the issues raised. It is impressed on the Claims Tribunal that it would be proper and necessary for them to give their findings on all the issues raised so that the cases may not entail remand in case the appellate court takes a different view on an issue as in the instant case. In the present case, the accident has occurred in the year 1974. To remand the case at this stage would result in inordinate delay in the disposal of the case. Already more than four years have elapsed. We have, therefore, proceeded to settle the compensation without having the benefit of the finding of the Tribunal. Such an exigency should be avoided scrupulously, by the Tribunals by answering all the issues raised for decision even though in their opinion the claim is liable to be dismissed for want of actionable negligence on the part of the driver concerned.

25. In the result, the appeal is allowed. The claimant-appellant is awarded global compensation of Rs. 5240 along with interest thereon at 6 per cent. per annum form the date of the petition till payment, as also the cost of this proceeding throughout. Advocate's fee before this court and also before the Trial Court is fixed at Rs. 100.

26. Under s. 110B of the Act, we direct that the entire amount of compensation awarded along with interest and costs shall be paid over to the claimant by the 3rd respondent, insurance company. Respondents shall bear their own costs.