



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE DR. JUSTICE H.B.PRABHAKARA SASTRY

MISCELLANEOUS FIRST APPEAL NO. 554 OF 2020 (MV-I)

BETWEEN:

MR. MURUGAN T

...APPELLANT

(BY SRI. G. RAVISHANKAR SHASTRY, ADVOCATE)

AND:

1. P. JAYAGOVINDA BHAT

Digitally signed
by BANGALORE
MADHAVACHAR
VEENA

Location: High
Court of
Karnataka

2. THE DIVISIONAL MANAGER
ORIENTAL INSURANCE CO. LTD.,
BEAUTY PLAZA, BALMATTA ROAD,
MANGALURU, D. K. DISTRICT
PIN-575001

...RESPONDENTS

(BY SRI.K. POORNABODHA RAO, ADVOCATE FOR R-2;
R-1 - SERVED AND UN-REPRESENTED)



THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, 1988, PRAYING TO MODIFY/SET ASIDE THE JUDGMENT AND AWARD DATED 05-07-2019 IN M.V.C.NO.1224/2017, PASSED BY THE I ADDITIONAL DISTRICT JUDGE AND MACT-II, MANGALURU, (DK) AND CLAIM PETITION BE ALLOWED AS PRAYED FOR BY ALLOWING THIS APPEAL IN THE ENDS OF JUSTICE.

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR ADMISSION THROUGH PHYSICAL HEARING/VIDEO CONFERENCING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

The present appellant was the claimant in M.V.C.No.1224/2017, before the I Additional District Judge and Motor Accident Claims Tribunal-II, Mangaluru (D.K.), (hereinafter for brevity referred to as "the Tribunal") whose claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter for brevity referred to as "the M.V. Act") for compensation from the respondents herein came to be dismissed as devoid of merit by the Tribunal vide its impugned judgment and award dated 05-07-2019.

Aggrieved by the same, the claimant before the Tribunal is before this Court through this appeal.



2. The summary of the case of the claimant in the Tribunal was that, on the date 19-01-2017, at about 9:00 a.m., when he was standing on the side of the road near Kankanady Bus Stand at Mangaluru, the driver of a Bus bearing registration No.KA-19/C-6864, driving the said Bus in high speed and in a rash and negligent manner, took the Bus in such a way so that its back wheel ran over the left foot of the claimant, inflicting grievous injuries upon him. Immediately, the claimant was taken to the Government Wenlock Hospital, Mangalore, where he was treated as in-patient for a week and thereafter getting himself discharged, he went to Erode at Tamil Nadu and was treated as an in-patient in a local Hospital there. Stating that at the time of accident, he was working as a Coolie and earning a sum of ₹10,000/- per month and was aged 45 years, however, due to the accident, he has lost his future income and also incurred huge medical expenses, the claimant has claimed a sum of ₹3,00,000/- as compensation from the respondents No.1 and 2, holding them as liable to pay him the compensation in



their capacity as the owner and insurer of the alleged offending Bus, respectively.

3. The Respondent No.1 (owner of the offending Bus) failed to appear before the Tribunal, however, the respondent No.2 (insurer of the offending Bus) appeared before the Tribunal and filed its Written Statement, wherein it has not only denied all the averments made by the appellant (claimant before the Tribunal), but also contended that it learnt that the claimant was trying to cross the Road without observing the traffic rules and thus was himself responsible for the alleged accident. However, the second respondent (insurer) admitted that the alleged offending motor vehicle Bus was insured with it. It also took a specific contention that, as on the date of the accident, the first respondent was not a policy holder.

4. Based on the pleadings of the parties, the Tribunal framed the following issues for its consideration:

"1. Whether the petitioner proves that on 19.1.2017 at about 9.00 a.m., while he was standing



on the side of the road near Kankanady Bus Stand, Mangaluru taluk, a bus bearing Reg.No.KA.19/C.6864 came with high speed in a rash and negligent manner from Kankanady side and the back wheel of the said bus passed over the left foot of the petitioner and caused accident in which he sustained grievous injuries due to the actionable negligence of the driver of the said bus?

2. *Whether the respondents prove that they are not liable to pay compensation?*

3. *Whether the petitioner is entitled for compensation? If so, what quantum and from whom?*

4. *what order or award?"*

5. In support of his contention, the claimant got himself examined as PW-1 and got marked documents from Exs.P-1 to P-13. From the respondents' side, no witness was examined, however, a copy of the policy was got marked as Ex.R-1. The case sheet of Wenlock Hospital was marked as Ex.C-1.

6. After hearing both side, the Tribunal vide its impugned judgment answered issue No.1 in the negative and issue Nos.2 and 3 as 'does not survive for



consideration' and proceeded to dismiss the claim petition filed by the claimant. Aggrieved by the same, the appellant (claimant) is before this Court.

7. The Respondent No.1 (owner of the offending Bus) though has been served with notice in the appeal, he has remained un-represented. Respondent No.2 (insurer) is represented by its counsel.

8. Though this matter is listed for Admission, however, at the request of the learned counsels for the parties, the matter is taken up for its final disposal.

9. The Trial Court records were called for and the same are placed before this Court.

10. Heard the arguments from both side. Perused the materials placed before this Court including the memorandum of appeal, impugned judgment and also the Trial Court records.



11. Learned counsel for the appellant (claimant) reiterated the grounds taken up by him in his argument also.

12. Learned counsel for the respondent No.2 (insurer), who is appearing through video conference, contended that, when the Tribunal has observed that the claimant was intoxicated with alcohol, it has rightly held that there is no negligence on the part of the driver of the Bus. He further submitted that though the impugned judgment sustains, however, in case if the Court finds some merit to remand the matter to the Tribunal, in which an event, the Tribunal also may be directed to consider the stand taken up by the respondent No.2 - Insurance Company in its Written Statement that, as on the date of the accident, the first respondent (owner of the Bus) was not a policy holder.

13. The claimant, as PW-1 has reiterated the averments made in his claim petition even in his affidavit evidence also. He has stated that on the date 19-01-2017,



at about 9:00 a.m., while he was standing on the side of the Road near Kankanady Bus Stand, Mangalore, a Bus bearing registration No.KA-19/C-6864, being driven by its driver in a rash and negligent manner from Kankanady side, ran over his leg, which resulted in he sustaining grievous injuries, i.e. fracture of the bones. In his support, he has produced the certified copies of the documents, i.e. FIR at Ex.P-1, complaint at Ex.P-2, Wound Certificate at Ex.P-3, spot mahazar at Ex.P-4, rough sketch at Ex.P-5, Motor Vehicle Inspector's report at Ex.P-6 and charge sheet at Ex.P-7. He has also produced the certified copy of the order sheet in C.C.No.1559/2017 at Ex.P-8.

14. The Tribunal, while giving its reasoning on issue No.1, has observed that the Wound Certificate at Ex.P-3 and the case sheet of the Wenlock Hospital, which was summoned at the instance of the claimant and marked as Ex.C-1, goes to show that, at the time of examination of the claimant, there was a smell of alcohol. Thus it is



observing that when the claimant was under the influence of alcohol, at the time of the accident and also was standing near the foot path, but leaving the foot path on the edge of the road, no negligence can be attributed on the part of the driver of the offending Bus. With the said observation, the Tribunal held that since the negligence on the part of the driver could not be established by the claimant, the claimant is not entitled for any compensation.

15. The learned counsel for the appellant (claimant) in his argument submitted that, mere smelling of alcohol cannot be a ground to hold that the accident in question has taken place solely due to the negligence of the claimant himself. He further submitted that, admittedly, the occurrence of the road traffic accident is not in dispute and the Police investigation records show that the Police have filed the charge sheet against the driver of the offending Bus for the offences punishable under Sections 279 and 338 of the Indian Penal Code, 1860 (hereinafter



for brevity referred to as "the IPC") and the said driver has pleaded guilty and the matter came to be closed. Thus, when the driver himself has pleaded guilty for the alleged offences punishable under Sections 279 and 338 of the IPC and was penalised accordingly and also PW-1 has led the evidence to the effect of establishing the rash and negligent driving on the part of the driver of the offending Bus, the Tribunal was at an error in answering issue No.1 in the negative.

16. Per contra, learned counsel for respondent No.2 (insurer) in his argument submitted that, when the claimant was under the influence of alcohol, at the time of the accident and even according to him, when the back wheel of the Bus has run upon his leg, no negligence on the part of the driver of the Bus can be attributed, as such, the Tribunal has rightly held that the claimant has failed to prove the negligence on the part of the driver of the alleged offending Bus.



17. At the outset, it has to be observed that, the only respondent (insurer) before the Tribunal in the matter which has filed its Written Statement, has not taken the contention of the alleged intoxication of the complainant(claimant) at the time of the alleged road traffic accident, as such, what was not pleaded by the parties, the Tribunal has attempted to notice on its own and base its entire reasoning for rejecting the claim petition of the claimant.

Secondly, no doubt, a perusal of the Wound Certificate at Ex.P-3 mentions the presence of 'smell of alcohol'. A mentioning to the same effect is also there in the case sheet of the Wenlock Hospital which is marked as Ex.C-1. The said observation, in the Wound Certificate, except stating that there was smell of alcohol, no where mentions as to whether the claimant who was a patient before the examining Doctor was intoxicated with alcohol.



It is not even shown as to whether the alleged smell of the alcohol was coming from the mouth of the alleged injured person. As such, the source of the smell of the alcohol whether was from the body of the injured or from the dress worn by him, has not been mentioned by the Doctor. However, the Tribunal assumed itself that mere mentioning of the 'smell of alcohol' as the conclusive proof of the claimant/patient consuming alcohol at the time of the alleged road traffic accident.

Thirdly, assuming for a moment that, the claimant who claims to be the injured in the road traffic accident in question, was intoxicated or smelling with alcohol, but the same cannot be an excuse for the driver of the offending Bus for causing the road traffic accident, causing injuries to the injured person. Even according to the Tribunal, it is not its finding that, by consuming alcohol, the claimant had fallen unconscious on the road and that he had inadvertently moved his feet and put his left foot beneath the back wheel of the offending Bus. On the contrary, the



Tribunal itself has observed that, he was standing on the side of the road just next to the foot path. Thus, even after taking that the claimant might have consumed liquor, still, he was in such a position of controlling himself and was able to stand properly on his legs. As such, any contribution on the part of the claimant in the road traffic accident also cannot be imagined or arrived at.

Fourthly, irrespective of the fact as to whether any person or animal is behaving abnormally or improperly or whether a person is intoxicated with liquor or not, it is the primary duty of the driver of any Motor Vehicle to drive the vehicle with utmost care and caution, that too, particularly, in a public place like a Bus Stand, which in the instant case is Kankanady Bus Stand at Mangaluru, which is said to be one of the busiest Bus Stands in the region where there is heavy movement of vehicles and large number of public. Any driver of a Motor Vehicle, including a passenger vehicle like the Bus in the instant case, is required to be more cautious and careful while driving a



Bus. As such, even for the sake of argument, if it is taken that the claimant was intoxicated with alcohol, it does not give any permission for the driver to run the Bus on the foot of that person.

Lastly, one of the reasons assigned by the Tribunal is also that, as it is the back wheel of the Bus that is said to have run over the foot of the claimant, no negligence can be attributed on the part of the driver of the Bus. The said reason assigned by the Tribunal is also not acceptable for the reason that, a driver, while driving the vehicle, would not consider the vehicle into two parts, as the front part with front wheel and the back part with the back wheel, which are under his control. When he drives the vehicle, the whole vehicle is required to be under his control and that he should drive the entire vehicle in such a care and caution that it shall not lead to any untoward incident like the road traffic accident as in the instant case. It is such a care and caution that is expected of a driver of any Motor vehicle. Therefore, no exception can be given that the



driver cannot be held as negligent when the back wheel of a heavy passenger vehicle is said to have passed on the leg of a pedestrian. In the instant case, it is nobody's case that the pedestrian (claimant) was not noticed or observed by the driver and that all of a sudden he came running and fell beneath the back wheel of the Bus. On the other hand, the case of the claimant, from the beginning, was that, he was standing on the side of a Road. Thus, a standing person was taken to be seen by the driver who was driving a passenger Bus in the premises of a Bus Stand, as such, he should have been more vigilant and cautious in driving the said Bus. Therefore, the reasoning given by the Tribunal that there was no negligence on the part of the driver of the alleged offending Bus is not acceptable.

18. In addition to the above, the contention taken up by the appellant in the memorandum of appeal that the driver of the offending Bus was charge sheeted for the offences punishable under Sections 279 and 338 of the IPC



is corroborated with the documentary evidence at Ex.P-7 which is a copy of the charge sheet.

Further, the contention of the appellant that the driver of the said vehicle pleaded guilty for the alleged offences and was sentenced accordingly is also corroborated by the certified copy of the order sheet in C.C.No.1559/2017 which is marked at Ex.P-8. Thus, the very pleading of guilt by none else than the driver of the offending Bus himself would go to show that, he has pleaded guilty for the offences punishable under Sections 279 and 338 of the IPC. This fact also was not taken into consideration by the Tribunal. As such, the road traffic accident, as alleged in the claim petition by the claimant, is not only proved but also proved that the said road traffic accident has occurred solely due to the rash and negligent driving by the driver of the offending Bus bearing registration No.KA-19/C-6864.

19. Since the Tribunal answering the issue No.1 in the negative, has not answered issue Nos.2 and 3 with reasons



and in view of the fact that the said finding of the Tribunal on issue No.1 also is now proved to be erroneous and the said issue requires to be answered in the affirmative, I am of the view that the matter requires to be remanded to the Tribunal for its answering to issue Nos.2 and 3.

Needless to say that in the process, the Tribunal would also consider one of the contentions taken up by the respondent No.2 (insurer) before it in paragraph 12 of its Written Statement that, as on the date of the road traffic accident in question, the first respondent (owner of the offending Bus) was not a policy holder.

Accordingly, I proceed to pass the following:

ORDER

[i] The appeal filed by appellant (claimant) stands ***allowed in part;***

[ii] The impugned judgment and award dated 05-07-2019, passed by the I Additional District Judge and Motor Accident Claims



Tribunal-II, Mangaluru (D.K.), in
M.V.C.No.1224/2017 stands set aside;

[iii] The matter stands remanded to the Tribunal, for its fresh consideration, in accordance with law, on the issues framed by it with a direction to the Tribunal to proceed with the trial from the stage of the argument on the main petition;

[iv] Since the claim petition in the Tribunal being of the year 2017, as such, one of the old matters, it is appreciated if the Tribunal disposes of the matter at the earliest, but not later than six months from today;

[v] To enable the Tribunal to expedite the matter in that regard, both side parties are directed to appear before the Tribunal on the date **27-03-2023 at 11:00 a.m.**, without anticipating any fresh notice or summons from it.



Registry to transmit a copy of this judgment along with the Trial Court records, to the concerned Tribunal, immediately.

**Sd/-
JUDGE**

BMV*
List No.: 1 SI No.: 31