

SUPREME COURT OF INDIA

Suresh Yallappa Patil

Vs.

General Manager, K.S.R.T.C.

C.A.No.7026 of 2002

(V. N. Khare and Ashok Bhan JJ.)

28.10.2002

JUDGEMENT

Ashok Bhan, J.

1. Leave granted.
2. In spite of service there is no appearance on behalf of the respondents. Proceeded ex parte.
3. This appeal is directed against the order of the High Court of Karnataka wherein the High Court has reduced the compensation awarded to the claimant/appellant from Rs. 1,40,000/- to Rs. 45,000/- under the *Motor Vehicles Act, 1988*.
4. On 1-4-1994 at about 6.30 p.m. while the appellant was standing near the Kondaskoppa Cross on Pune-Bangalore road waiting for a vehicle for transporting potatoes to Belgaum a KSRTC bus belonging to the respondent Corporation came in a rash and negligent manner and dashed against the appellant as a result of which the appellant sustained grievous injuries. His right foot was crushed. He was shifted to District Hospital Belgaum where he was an indoor patient for 6 days. Thereafter he was removed to a private hospital where he was an indoor patient for 40 days. In the private hospital skin grafting was done for the second time by an Orthopaedic surgeon, Dr. Dinesh Kale, PW5.
5. A case was registered on the basis of the complaint filed. The appellants filed claim petition under the Motor Vehicles Act, 1988, hereinafter referred to as 'the Act', before the Motor Accident Claims Tribunal, Belgaum, for short 'the Tribunal' in MVC No. 646 of 1994 claiming a compensation of Rs. 3,00,000/-. The appellant was 36 years of age at the time of accident. He was an agriculturist and in addition vending milk as well. It was alleged that due to the said accident the appellant was not able to do the work which he was doing immediately prior to the accident resulting in loss of income. The compensation was claimed under various heads.

6. The respondents in their written statement denied their negligence as the cause of accident. It was contended that on the date of accident the said KSRTC bus was on Alnawar Belgaum route and when the said bus was near Kondaskoppa cross, some of the passengers made signal to stop the bus, so the bus was stopped, in the meanwhile one of the passengers who was standing in front of the truck instead of boarding the bus tried to get into the truck and in that process the said passenger fell in front of the bus and sustained injuries. It was contended that it was the driver of the bus who had brought the injured to get him admitted to the hospital. It was further contended that the accident had occurred due to the fault of the claimant and not due to the negligence of the driver as alleged.

7. On these pleadings issues were framed. Appellants produced oral evidence in the form of PW 1 to PW 5 and documentary evidence as Ex-1 to Ex-72. PW 2 was the eye witness who fully supported the version given by the claimant. PW 5, Dr. Dinesh Kale an Orthopaedic Surgeon, stated that the appellant had suffered permanent physical disability to the extent of 55 per cent in the right foot. He assessed the physical disability and found that there was antalgic gait and squatting and sitting with crossed-legs was painful. From the X-ray taken it was opined that there was osteomyelitis changes in navicular, talus and secondary QA changes in talonavicular joint.

8. Tribunal after examining the matter in great detail taking into account the extent of injury and loss of income assessed the overall compensation payable at Rs. 1,40,000/- under the following heads :

	Rs.
1. Pain, shock, suffering	25,000/-
2. Towards medical bills and other incidental charges	30,000/-
3. Towards loss of amenities and enjoyment in life.	5,000/-
4. Towards loss of future income or earning capacity.	78,000/-
5. Towards loss of income during the period of medical treatment	2,000/-

9. Respondents being aggrieved filed an appeal before the High Court. The High Court believed the evidence of the driver of the bus, RW 1, solely on the ground that had he been negligent and guilty in causing the injury, he himself would not have taken the injured to the hospital. Evidence of eye witness PW 2 was discarded simply by saying that he was an interested witness. No reasons were given for discarding his testimony. Without recording any reasons, the High Court concluded that claimant contributed to the extent of 50 per cent in causing the accident. That the sum of Rs. 78,000/- towards loss of future income or loss of earning capacity was highly exaggerated. This finding was recorded on the ground that the appellant was working with his brother. Since he was working with the brother, the future loss of income could have been less and reduced the loss of future income to Rs. 25,000/-. No reasons were given for assessing the loss at Rs. 25,000/-. By reducing the loss of future income the total compensation was reduced to Rs. 87,000/-. As the claimant himself was found guilty of contributory negligence in causing the accident to the extent of 50 per cent the total compensation payable was reduced to Rs. 43,500/- which was rounded off to Rs. 45,000/-.

10. In our view the reasoning and the conclusion arrived at by the High Court are not sustainable in law. No reasons have been recorded for disbelieving the statement of eye witness PW 2. He has been disbelieved only on the ground that had the driver been negligent he himself would not have taken the injured to the hospital. This by itself is no reason to either disbelieve PW 2 or to believe RW 1. Thus the finding arrived at by the High Court that the appellant himself contributed to the extent of 50 per cent in causing the accident cannot be accepted. Similarly, only because the appellant was working with his brother would not mean that the loss of future income could not be to the extent of Rs. 78,000/-. The Tribunal after detailed examination keeping in view the income and the injury suffered by the appellant assessed the loss of future earning at Rs. 78,000/-. No reasons much less plausible reasons have been given for reducing the loss of future income to Rs. 25,000/-.

11. For the reasons stated above, the conclusion arrived at by the High Court cannot be sustained. Accordingly, the impugned order of the High Court is set aside and that of the Tribunal restored. From the interim order passed by this Court on 15th February, 2002, it seems that the respondents had deposited the awarded amount in the High Court of Karnataka at Bangalore. We presume that the same must have been kept in interest bearing deposits. The High Court is directed to pay the said amount to the appellant/claimant along with the accrued interest. If the amount deposited was not kept in the interest bearing deposits/not deposited at all then the claimant/appellants would be at liberty to claim the amount along with the awarded rate of interest from the respondents. Since the respondents are not represented before us we make no order as to costs.
Order accordingly.