SUPREME COURT OF INDIA

T.O.Anthony

Vs

Karvarnan & Ors.

C.A.No.1082 of 2008

(K.G.Balakrishnan and R.V. Raveendran,JJ.)

01.02.2008

JUDGMENT

K.G.Balakrishnan, CJI.

1. Leave granted. Heard learned counsel for the parties.

2. The appellant was a driver working with the Kerala State Road Transport Corporation. On the date of the accident, he was driving the KSRTC bus (KL 15/1074) from Palakkad to Trichur. When his bus was near Kannanoor a private bus (KL 9A-3456) driven by the first respondent (belonging to second respondent, and insured with third respondent) came from the opposite side and there was a head-on collusion. As a result the appellant sustained injuries including fracture of right femur. He filed a petition before the Motor Accident Claims Tribunal, Palakkad claiming Rs.2,50,000/- as compensation. By judgment and award dated 13.5.1998 the Motor Accident Claims Tribunal allowed the claim petition in part. The Tribunal held that the accident occurred due to the composite negligence of drivers of both vehicles and it could not be said that the accident occurred solely due to the negligence of the first respondent. The Tribunal further held that as the accident occurred due to contributory and composite negligence of the drivers of both the vehicles, the liability should be fifty-fifty (that is 50% each). The tribunal determined the compensation as Rs.78,500/-. In view of its decision that the appellant was responsible for the accident, to an extent of 50%, it deducted 50% therefrom for appellant's negligence, and awarded Rs.39,250/- to the appellant with interest at the rate of 12% per annum from date of petition till date of realization, and directed the third respondent (Insurer) to pay the said amount.

3. Aggrieved by the said award, the appellant filed an appeal before the High Court. The High Court by judgment dated 3.3.2005 allowed the appeal in part. The High Court did not disturb the finding regarding negligence. It however increased the compensation and directed payment of an additional compensation of Rs.39,900/- to the appellant with interest at 9% P.A. from date of petition till date of payment. Not being satisfied with the judgment of the High Court, the appellant has filed this appeal by way of Special Leave.

4. The appellant contended that at the time of the accident, he was driving his bus at a moderate speed in a careful manner and his bus was traveling from East to West on the correct side of the road. According to him the private bus, being driven by the first respondent in a rash and negligent manner, came from the opposite side, went to the wrong side of the road and dashed against his bus. He contended that The Tribunal and High Court ought to have held that the first respondent was solely responsible for the accident, and consequently, awarded the compensation without any deduction.

5. The Tribunal assumed that the extent of negligence of the appellant and the first respondent is fifty:fifty because it was a case of composite negligence. The Tribunal, we find, fell into a common error committed by several Tribunals, in proceeding on the assumption that composite negligence and contributory negligence are the same. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is he partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the

negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.

8. It is not in dispute that the Mahazar Ex. P-2 showed that the accident spot was at a distance of 2.26 meters from the Southern edge of the tarred road and 4.79 meters from the Northern edge of the tarred road. If the appellant was proceeding from Palakkad to Trichur (from East to West) and the accident occurred at a distance of 2.2 meters from the southern edge of the road and 4.79 meters from the Northern edge of the road, the inference is that the appellant was on the right side of the road and the private bus came partly to the wrong side of the road. But the fact that there was a head-on collision could not be ignored. The evidence shows that the appellant was not diligent, as he neither slowed down the bus nor swerved to his left, on seeing the oncoming bus. On the facts and circumstances we are of the view that the appellant was also partly responsible for the accident and we fix the responsibility at 25% on the appellant and 75% on the first respondent.

9. In regard to the quantum we find that the Tribunal awarded Rs.15,000 for medical expenses, Rs.1,000 for attendant's expenses, Rs.5,000 towards loss of earnings, Rs.1,000 towards transportation, Rs.1,000 towards nourishing food, Rs.500 towards damage to clothing, in all Rs.23,500 as special damages. It quantified the compensation for pain and suffering as Rs.5,000/- and for partial permanent disability and consequential loss of future earning capacity as Rs.50,000/-, in all Rs.55,000/- as general damages. Thus, the Tribunal arrived at the total compensation as Rs.78,500 and after deducting 50% towards the negligence of the appellant, it awarded Rs.39,250/- to the appellant. The High Court found that the special damages aggregating to Rs.23,500 did not require interference. But it increased the compensation under the head of pain and sufferings to Rs.10,000 (instead of Rs.5,000) and the compensation under the head of disability and future loss of earning to Rs.1,24,800 (instead of Rs.50,000). Thus the High Court increased the quantum of compensation from Rs.78,500 to Rs.1,58,300. As the increase was Rs.79,800/-, it awarded 50% of the increased amount that is Rs.39,900/- to the appellant. We find that the quantum of compensation arrived at by the High Court, on the facts and circumstances, is reasonable and does not call for any increase.

10. The appellant contended that compensation has not been awarded to compensate the leave he took for purposes of treatment. We find that both the Tribunal and the High Court have awarded compensation under the head of loss of earnings during the period of treatment. In so far as loss of earning during the period of any future treatment (after the date of claim petition), it will be covered by the award under the head of compensation for disability and future earning capacity. Therefore we do not find any reason to increase the quantum on that head.

11. As we have found that the extent of contributory negligence on the part of the appellant is only 25% and not 50%, the compensation has to be reduced only by 25% and not 50%.

Therefore, the compensation awardable to the appellant will be Rs.1,18,725 (that is Rs.1,58,300 less 25% thereof). As the Tribunal has awarded Rs.39,250 and the High Court has awarded another Rs.39,900, the appellant will be entitled to the balance of Rs.39,575 as additional compensation.

12. We accordingly allow this appeal in part and hold that the appellant is entitled to an additional sum of Rs.39,575 with interest @ 9% P.A. from the date of petition till date of realization. It is made clear that the said sum is in addition to what has been awarded by the Tribunal and the High Court. Respondents 1 to 3 are jointly and severally liable to pay the said amount to the appellant, and the third respondent-insurer is directed to pay the same. Appellant will also be entitled to costs of Rs.2,00