Supreme Court of India
Karnataka State Road Transport ... vs K.V. Sakeena & Ors on 15 March, 1996
Equivalent citations: 1996 SCC (3) 446, JT 1996 (4) 32
Author: B S.P.
Bench: Bharucha S.P. (J)

PETITIONER:
KARNATAKA STATE ROAD TRANSPORT CORPORATION

Vs.

RESPONDENT:
K.V. SAKEENA & ORS.

DATE OF JUDGMENT: 15/03/1996

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 SCC (3) 446 JT 1996 (4) 32
1996 SCALE (2)845

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NO.102/92, 103/92, 104/92, 105/92 & 106/92 J U D G M E N T BHARUCHA, J.

This is an appeal by special leave against the judgment and order of a Division Bench of the Karnataka High Court. The Division Bench was hearing appeals against three judgments delivered by the Motor Accidents Claims Tribunal, Bangalore, arising upon six claim petitions. Four claim petitions were filed to recover compensation for the death of four persons and two for injuries sustained. The four deceased and two injured persons were passengers in a bus owned by the Karnataka State Road Transport Corporation, the appellant, when it was involved in an accident at 10.30.p.m. on 6th May, 1987, on the Bangalore-Mysore road. The accident occurred when the bus hit a truck trailer coming from the opposite direction. Upon the trailer was mounted a rear dumper, (the rear dumper is a vehicle used to carry and dumo earth from its rear end.) Subsequent to the collies, the bus moved 150 feet, collided with a tree on the eft of the road and turned turtle. The bus

driver was among those who died. The Tribunal came to the conclusion that it the bus driver alone who was negligent. It rejected the contention that there was any negligency on the part of the driver of the truck. Before the High Court, as before us, it was not in dispute that the driver of the bus was negligent, but it was canvassed on behalf of the Corporation that the driver of the truck had by his negligence contributed to the accident and that the liability to pay compensation was joint and several and should be apportioned in accordance with the degree of their respective negligee. The High Court found against the Corporation.

The road upon which the accident took place was straight. It was 24 feet wide and on either side had mud shoulders approximately 8 feet wide. The truck trailer was 12 feet wide. The dumper upon it was 15 feet wide so that it protruded beyond the width of the trailer by one and a half feet on either side. The dumper weighed 25 tonnes. The truck was travelling slowly, at a speed of about 5 kms. per hour. The bus, coming in the opposite direction, was speeding.

Reliance was placed before the High Court and before this Court upon a notification dated 7th March, 1987, issued by the Government of Karnataka under the provisions of Rule 341 of the Karnataka Motor Vehicles Rules, 1963. The notification permitted the Haulpak 35T Rear-Dumpers described in its Schedule belonging to M/s. Bharat Earth Movers Limited to ply in public places subject to the conditions therein stated. The Schedule mentioned the serial, chassis, engine and transmission numbers of six Haulpak 35 T Rear Dumpers. The conditions also indicated that the notification applied to the plying of the dumpers themselves upon public roads and not to their carriage upon other vehicles; as for example, the first condition said that only an empty vehicle should be transported and it should not carry any load over and above its own weight. We agree with the High Court that this notification had no application to the transport of the dumper on the truck trailer which was involved in the accident.

Learned counsel for the Corporation then drew our attention to Rule 331 of the Karnataka Motor Vehicles Rules, 1963. We must say that it does not appear that this rule was pointed out to the High Court. The rule provides for the protection of loads on motor vehicles. Sub rule (2) thereof states, "No person shall drive, and no person shall cause or allow to be driven, in a public place any motor vehicle which is loaded in a manner likely to cause danger to any person or in such a manner that the load or any part thereof or anything extends : (1) laterally beyond the side of the body or beyond the vehicle plane in prolongation of the side of the body.....". The dumper, as the Tribunal has recorded upon the basis of evidence, protruded on either side of the truck to an extent of one and a half feet. The manner in which the dumper was being transported was, therefore, in clear contravention of the rule. It could have been so transported only with permission, and subject to such conditions as were specified, under sub-rule 3 of Rule 331, which reads thus :

> "(3) The District Magistrate with the concurrence of the Regional Transport Authority may be order in writing exempt any motor vehicle for such purpose and for such period, and subject to such conditions as may be specified from any or all of the provisions of this rule."

No such permission was brought on record.

The High Court and the Tribunal placed great emphasis on the fact that the truck was being driven very slowly and on the correct side of the road. Considering that it was carrying a weight of 25 tonnes, the truck could not have proceeded other than very slowly. It will be remembered that the trailer was 12 feet wide and the dumper protruded on either side by one and a half feet. Even assuming, therefore, that the truck was being driven on the extreme left of the tarred road, it was occupying thirteen and a half feet of its twenty-four foot width, and for this purpose we assume that the one and a half foot over-hang of the dumper on the left was over the mud shoulder. It will also be remembered that the accident occurred at 10.30 p.m., which would mean that both the bus and the truck had their headlights on. The Tribunal has held that "the bus driver was not justified in hitting the bulldozer.....". It appears, therefore, that what the bus hit was the protruding portion of the dumper. The effect of a speeding bus hitting the protrusion of equipment that weighs 25 tonnes is not difficult to imagine.

The evidence of the driver of the truck is that he had put red lights and flags on either side of the truck trailer. The claimants' witnesses do not speak of the existence of red lights or flags. The Mahazar and the FIR also do not mention them. It appears to us that, but for the protrusion of the dumper from the bed of the trailer, the bus and the truck would have safely passed by each other. The protrusion of the dumper beyond the bed of the trailer was, clearly, not highlighted. Given the glare of blazing hacadlights, the bus driver, at the speed at which he was travelling, did not realise that there was a protrusion beyond the bed of the trailer as massive as of a dumper and collided with it. The collision, necessarily, had grave consequences. The driver, sitting at the very front of the right of the bus, would have taken the full impact and may well have died on the spot. It is, at any rate, more than likely that he would have been rendered unconscious or incapacitated and that the progress of the bus 150 feet thereafter until it hit tree was unguided.

The High Court noted that the front of the bus had been badly damaged as a result of its collision with the tree. It noted that a report before it spoke of a side panel of the bus and its supporting angles being torn, but it commented on the fact that the report did not say that it was the side panel on the right hand side of the bus. If in this accident a side panel of the bus was torn, there can be no doubt that it was the right hand side panel for it was the right hand side of the bus which came into contact with the dumper on the truck trailer. It may well be that some or even many of the injuries sustained by the passengers of the bus were the result of its collision with the tree, but it cannot be forgotten that its collision with the tree was the consequence of its earlier collision with the dumper upon the truck trailer.

In the circumstances, while thee is no doubt about the negligence of the bus driver and his contribution to the cause of the accident, the driver of the truck cannot be absolved. He was driving late at night a truck trailer which bore upon it very heavy machinery that protruded one and a half feet on either side of the bed of the trailer and the protrusion was not clearly marked out by red lights or reflectors thereon for oncoming vehicles to plainly notice. The carriage of the dumper upon the trailer in this manner was in breach of Rule 331 of the Karnataka Motor Vehicles Rules, 1963. In our view, the sum total of this is, plainly, negligence.

Learned counsel for the insurer of the truck trailer submitted that there was no evidence to show that the dumper had projected laterally from the bed of the trailer. We have already drawn attention to the fact that the Tribunal has so held; in its words : "As admitted by RW1 lorry driver, width of the bulldozer was 15' width of the lorry was 12 feet, and on either side do edges of lorry bulldozer was protruding to an extent of one and a half feet." It was submitted that the driver of the trailer had taken all precautions by way of showing red lights and flags. Here also we have drawn attention to the evidence. In this regard the Tribunal had this to say : "RW1 is said to have rushed to the spot and prepared the sketch as per Ex.R2 and he is said to have not found any flags fixed on the protruded portion of the bulldozer carried in the lorry. This fact is disputed by RW1. He states that he had kept red lights and flags on either side of the lorry. None of the witnesses examined on behalf of petitioner ever speak about existence of red flags or lights. Mahazar does not make anything clear about the existence of red lights or flags either side of the lorry. Similarly, FIR does not say about existence of such flags or red lights." We are, therefore, unable to accept these submissions on behalf of the insurer of the truck trailer.

The question then arises as to the proportion in which the driver of the truck contributed, by reason of their negligence, to the accident and how the liability to the claimants should be apportioned between them.

Learned counsel for the Corporation drew our attention to the judgment of the Court of Appeal in Rouse vs. Squires and others, 1973 All about 10.30 p.m. on a frosty night Allen was driving an articulated lorry along a motor-way when, because of his negligence, it skidded, `jack-knifed' and ended up blocking the slow and center lanes of the carriageway. A car travelling behind collided with the lorry. Its rear lights remained on. Rouse saw the accident and drove his lorry safely past. He then parked and returned to render help. Another lorry, driven by Franklin, pulled up some 15 feet short of Allen's lorry. Franklin left his headlights on purposely to illuminate the broken down lorry. Finally, some five to ten minutes after the original accident, Squires arrived on the scene driving his employers's lorry at a fast speed. He did not realise, when he first saw the vehicles some 400 yards away, that they were stationary and that two lanes of the carriageway were obstructed. Eventually, at a distance of some 150 yards he applied his brakes but, because of the frosty surface, he skidded. His lorry collided with the rear of Franklin's lorry and pushed it forward with the result that it knocked Rouse down and caused him fatal injuries. Rouse's widow obtained damages against Squires in respect of his negligent driving and, in third party proceedings, Squires claimed contribution from Allen and his employers in respect of Allen's negligence. The trial judge dismissed the claim holding that Squires was wholly to blame for the accident since the broken down lorry was adequately lighted and, if Squires had kept a proper look-out, he would have seen it some 400 yards away thereby giving himself sufficient time to take avoiding action. Squires appealed. Cairuns, LJ observed :

> "If a driver so negligently manages his vehicle as to cause it to obstruct the highway and constitute a danger to other road users, including those who are driving too fast or not keeping a proper look- out, but not those obstruction, then the first driver's negligence may be held to have contributed to immediate cause was the negligent driving of the vehicle which because of the presence of the obstruction collides with it

> or with some other vehicle or some other person. Accordingly, I would hold in this case that Mr. Allen's negligence did contribute to the death of Mr. Rouse.
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> xxx xxx xxx I look at the situation in this way. Of course we do not know exactly what happened to Mr. Allen's lorry; but there was nothing to suggest that he had any emergency situation to face. For some reason he had simply lost control of his vehicle, presumably by driving too fast on a frosty road or by unwisely applying his brakes. Mr. Squires has been held by the learned judge (and I do not query this part of his finding) to have been extremely negligent in that, in addition to driving too fast, he failed in keep a proper look-out. But is can be said of his that he did not initiate the dangerous situation but failed to take adequate steps to cope with a situation that already existed. Through that failure he must be held to be the person mainly respondent for this calamity. In my view the right proportion of blame which should be put on his shoulderls is 75 per cent as agianst 25 per cent on Mr. Allen." Mackenna J. agreed, and said :
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> "On these facts I would hold that Mr. Allen's negligence contributed to cause the fatal collision between Mr. Squires and Mr. Franklin. His driving in such a way that his lorry ended up across two lanes of the roadway was negligent because of the risk it created for other vehicles travelling in the same direction. The risk was that these other vehicles might collide with the lorry or might cause or suffer damage in seeking to avoid such a collision. Though this risk was diminished when the head-lights of Mr. Franklin's lorry were focused on the trailer, it still existed to a substantial degree, and because of it Mr. Squires collided with Mr. Franklin's lorry. The case might have been different if there had been no connection between Mr. Allen's negligent driving and the fatal collision except that it had caused Mr. Franklin to stop where he did."

Buckley, LJ also agreed, holding that there was no break in the chain of causation between Allen's negligence and the accident.

We are in agreement with the observations of Cairns, LJ.

The driver of the truck trailer managed it in a way which caused it to occupy atleast thirteen and a half feet of the twenty-four foot wide tarred highway. He carried upon the trailer at the dead of night a massive protrusion which was not clearly marked out. It constituted a danger to other road users, and it made no difference that hose road users, like the bus driver, were driving fast. The negligence of the driver of the truck must necessarily be held to have contributed to the causation of the accident, by which we mean not only the collision of the bus with the protrusion upon the truck trailer but also its later collision with the tree. The chain of events began with the bus hitting the dumper projecting from the bed of the trailer outward onto the width of the road and ended with its collision with the tree. But for the former collision the latter collision would not have occurred. The negligence of the truck driver certainly contributed to the accident, but we do not think that the proportion in which he contributed can be said to be equal to the contribution of the bus driver, which is the submission made in the pleadings of the Corporation before this Court. In our view, the

proportion of negligence should be 60 per cent that of the bus driver and 40 per cent that of the driver of the truck trailer. Had the former not been speeding he would have noticed the bulk upon the trailer and kept prudently away.

Learned counsel for the insurer of the truck trailer submitted that the conditions of its insurance policy were breached by reason of the negligence of its driver. He also submitted that, in any event, the insurer of the truck trailer could not be made liable for any amount beyond that provided under the Motor Vehicles Act. Although the plea of the contributory negligence of the driver of the truck was taken before the Tribunal, the aforesaid contentions were not raised and the insurance policy covering the truck trailer was not brought on record. It is, therefore, not possible to accede to either of the submissions afforestated.

We find that in the claim petitions that were decided by the Tribunal on 30th October, 1988 (out of which M.F.A. Nos.141 and 142 of the 1989 arose before the High Court and Civil Appeals 102 and 103 of 1992 arise before this Court) the Corporation had led no evidence at all. In those matters the liability to pay compensation must remain exclusively that of the Corporation.

In the result, Civil Appeals 101, 104, 105 & 106 of 1992 are allowed. The judgment and order under these appeals is set aside insofar as it holds that the owner, driver and insurer of the truck trailer were not responsible for payment of any part of the compensation awarded. The owner, driver and insurer of the truck trailer are held to be liable, jointly and severally, to pay 40 per cent of the compensation. Having regard to the fact that the compensation has already been paid by the Corporation, the Corporation shall be entitled to recover 40 per cent thereof from the owner, driver and insurer of the truck trailer.

Civil Appeals 102 and 103 of 1992 are dismissed. There shall be, no order as to costs in all the Civil Appeals.