(2014) 01 KAR CK 0134

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 1205 and 54/2010 (MV) in MFA 1205/2010

A. Arun APPELLANT

Vs

H.B. Pushpa
 New India Assurance Company Ltd., Vs A. Arun RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 1 ACC 548 : (2015) 3 AKR 492 : (2015) 6 ALLMR 19 : (2014) ILR 5169

Hon'ble Judges : Mohan M. Shantana Goudar, J;B. Sreenivas Gowda, J

Bench : Division Bench

Advocate : R. Chandrashekar for V.R. Sundara Murthy, Advocate and S.V. Hegde Mulkhand, Advocate for the Appellant; S.V. Hegde Mulkhand, R. Chandrashekar, for V.R. Sundara Murthy and Vasanthappa, Advocate for the Respondent

Judgement

B. Sreenivas Gowda, J.—In the road traffic accident that occurred on 4-11-2004 at Dodda Thogur Cross near Konappana Agrahara on N.H. 4-Hosur Road, due to involvement of goods vehicle (LMV) Tata-407 bearing Reg. No. KA-05-7946 (for short goods vehicle) and Maruthi Zen car (for short ''car''), one Rekha Nataraj who was driving the car died.

2. Her husband and minor daughter filed a claim petition in MVC No. 1640/2005 before the MACT, Bangalore City seeking compensation of Rs. 3 crores under Sec. 166 of the Motor Vehicles Act (herein after referred to as ''M.V. Act'' for short) from the owner and the insurer of the goods vehicle.

3. The Tribunal, by impugned judgment and award has awarded compensation of Rs. 58,41,000/- and held both the owner and the insurer of goods vehicle jointly and severally liable to pay the compensation amount to the claimants, holding that the accident has occurred solely due to the rash and negligent driving of goods vehicle by its driver.

4. Aggrieved by the award of the Tribunal, the insurer has preferred MFA No. 54/2010 both on the ground of negligence as well as quantum, whereas, the claimants have preferred MFA No. 1205/2010 seeking enhancement of compensation awarded by the Tribunal.

5. As both the appeals are arising out of a common judgment and award of the Tribunal, they were heard together and disposed of by this common judgment.

6. The learned Counsel appearing for the claimants submits that there is no infirmity or illegality in the finding of the Tribunal on negligence. But, he submits, quantum of compensation awarded by the Tribunal is on the lower side and it is required to be enhanced. Therefore, he prays for enhancing the compensation awarded by the Tribunal by allowing the appeal filed by the claimants and to dismiss the appeal filed by the insurer of goods vehicle.

7. Per contra, the learned counsel appearing for the Insurer of goods vehicle submits, eventhough the driver of goods vehicle was taking right turn on NH-4, Hosur Road near Konappana Agrahara slowly and carefully by giving indication to the vehicles coming from behind, the deceased Rekha Nataraj drove her car in a rash and negligent manner and dashed against the goods vehicle. Therefore, the accident has occurred solely due to the rash and negligent driving of the car by the deceased herself. If not, it is due to contributory negligence of both the vehicles as deceased had also contributed towards the accident and the Tribunal should have held that the accident has occurred due to contributory negligence of both the vehicles. The Tribunal, without considering this aspect of the matter has committed an error in holding that accident has occurred solely due to rash and negligent driving of goods vehicle. Regarding quantum, his submission was, the husband of deceased being a salaried person cannot be considered as dependent legal heir of the deceased and the daughter of deceased being the only dependent legal heir deduction of 1/3rd of the income of the deceased by the Tribunal towards her personal expenses is not proper and therefore quantum of compensation awarded by the Tribunal is on the higher side and hence it is required to be reduced. With this, he prays for allowing of the appeal preferred by the Insurer of goods vehicle both on the ground of negligence and quantum and dismiss the appeal filed by the claimants for enhancement.

8. After hearing the learned counsel for the parties and perusing the Judgment and Award of the Tribunal, the points that arise for our consideration are:

1. Whether the finding of the Tribunal on negligence that accident occurred solely due to the rash and negligent driving of the goods vehicle by its driver is just and proper?

2. Whether the quantum of compensation awarded by the Tribunal is just and reasonable or does it call for reduction or enhancement?

Re: Point No. 1:

9. Claimants, in support of their contention that on 4.11.2004 at about 12.40

p.m. when deceased Smt. Rekha Nataraj was driving her car on N.H.-4 Hosur Road slowly and cautiously and approached Doddatogur Cross near Konappana Agrahara, at that time, the driver of goods vehicle came in a high speed in a rash and negligent manner and took sudden right turn from the left side of her car and dashed against her car, as a result of which she sustained multiple fatal injuries and she was immediately shifted to St. John''s Medical College Hospital for treatment where she was declared as dead and therefore, the accident has occurred solely due to the rash and negligent driving of the goods vehicle by its driver, have examined the first claimant i.e. the husband of the deceased as PW. 1 and have produced the copies of FIR along with the complaint, charge sheet, Mahazar, inquest, PM Report and IMV report which were marked as Exs. P1 to P7.

10. The first respondent-the owner of the goods vehicle in support of her contention that the accident has occurred solely due to rash and negligent driving of the car by deceased herself has examined herself as RW. 1 and she has not produced any documents. Similarly, the insurer of goods vehicle in support of its contention that, the accident has occurred solely due to rash and negligent driving of the car by deceased herself has examined one of its official as RW. 2 and has produced the copy of Insurance policy and certified copy of Judgment in CC No. 1179/05 as Ex. R1 and Ex. R2 respectively.

11. PW. 1 the husband of deceased Rekha Nataraj in his cross-examination by the learned counsel for the Insurer has deposed that public informed him regarding the accident through telephone. At the time of accident, his wife was driving the car and no person was present along with her. She had licence to drive the car and he has produced her driving licence which was marked as Ex. P26. He has denied the suggestion that the accident has occurred solely due to the negligence of his wife.

12. The owner of the goods vehicle examined as RW. 1 in her statement of objection and as well as in para 3 of her examination-in-chief has stated that on 4.11.2004 at about 12 p.m. the driver by name Chinnareddiappa was driving the goods vehicle belonging to her and when he reached near Togur Cross while in the process of taking ''U'' turn the accident has occurred. In her cross-examination by the learned counsel for the claimants, she has admitted that her goods vehicle has caused the accident on 4.11.2004 and after causing the accident, the driver of her goods vehicle has left the job. It is relevant to note that she was not cross-examined by the insurer on this admission. She has not stated in her entire evidence that the accident has occurred solely due to the rash and negligent driving of the car by the deceased herself as contended by her in her statement of objections.

13. RW. 2 an official witness of the Insurance Company in his cross-examination has stated that he has no personal knowledge of the accident and he came to know about the accident after receipt of notice in the claim petition.

14. One V.G. Reddy working as Field Officer, S-MAC Services Ltd., in his

complaint lodged to the Police informing about the accident which is marked along with the FIR as Ex. P. 1 has stated that he was on duty near Doddathogur Cross, N.H. 4 on 4-11-2004. At about 12.20 p.m. one goods tempo vehicle bearing Reg. No. KA-05-7946 coming from Bangalore suddenly took right turn towards Electronic II Phase. Behind that vehicle, Maruti Zen car bearing Reg. No. KA-03-M-568 was also coming from Bangalore, due to sudden turn of the goods Tempo, the Maruthi Zen car hit the right side front portion of the Tempo causing major injuries to the car driver-Rekha Nataraj working at G.E. Capital International Services, Electronic City, and immediately she was shifted to St. John''s Hospital where the doctors declared her as dead. The Police after investigating the complaint have laid the charge sheet against the driver of the goods vehicle.

15. It is settled principle of law that an acquittal of driver of an offending vehicle by Criminal Court in a criminal case cannot be the basis to come to a conclusion or to hold that he has not caused the accident and there is no negligence on his part. It has been held in catena of decisions of several High Courts including our High Court and Apex Court that the Tribunal while functioning under the provisions of the Motor Vehicles Act, which is an independent beneficial legislation introduced for the benefit of victims in road traffic accidents has to independently decide the question relating to negligence on the basis of oral and documentary evidence placed before it.

16. The accident has occurred at Doddathogur cross near Konappana Agrahara-N.H. 7, Hosur road just before a ''U'' turn. Both the vehicles were proceeding in the same direction i.e. from Bangalore towards Hosur. It is a double road having 6 lanes and there is a divider in between and on each side there are 3 lanes. That means, at a time 3 vehicles can proceed on each side in 3 different lanes. The car was proceeding in the middle track of the left side of Hosur road. The goods vehicle was proceeding on the extreme left track of Hosur road. Admittedly, the driver of goods vehicle took right turn from the left side of the car in order to take ''U'' turn. The allegation against him was, before taking ''U'' turn he has not given signal/indication to the vehicles coming from behind. To disprove the same, the insurer of goods vehicle who contends that the accident has occurred solely due to the rash and negligent driving of the car by the deceased herself though has taken summons to the driver of the goods vehicle to examine him but has not pursued the same by taking coercive steps and examined him nor it has examined the complainant who has stated in his complaint lodged to the Police that the accident has occurred on account of taking sudden right turn by the driver of goods vehicle from the left side of the car nor examined any eye witness to the accident. The Tyre marks shown in the sketch and the spot mahazar marked as Exhibits P. 3 and P. 4 would clearly go to show that the driver of goods vehicle took right turn from the left side of the car. If the driver of goods vehicle had taken right turn from the right side of the car by slowly keeping his vehicle towards right track of the road as required under the Traffic Rules and Regulations, the accident would not have occurred and he

could have avoided the accident, on the other hand, there was absolutely no scope for the deceased who was already proceeding in the middle track close to the right side track of the road to avoid the accident, so she was forced to hit the goods vehicle on its right front portion. The I.M.V. report marked as Ex. P7 clearly discloses, the right side front portion of the car was badly damaged. Due to the impact, deceased sustained grievous injuries and she was immediately shifted to St. John''s College Hospital, where she was declared as dead. The Tribunal considering the above material on record has rightly held that the accident has occurred solely due to the rash and negligent driving of goods vehicle by its driver.

17. We have carefully gone through the finding of the Tribunal on negligence and we do not find any valid reason to reverse the said finding of the Tribunal and therefore, we confirm the same and point No. 1 is answered accordingly.

Re: Point No. 2:

18. The claimants in para. 22 of their claim petition as well as in their evidence spoken through PW1 husband of the deceased and PW. 2 Preeti Patnaik who was working as Asst. Vice President (HR) in GE Capital International Services now known as M/s. Genpact India Ltd., where the deceased was working at the time of accident, have stated that deceased was very brilliant, intelligent and was highly qualified and very distinguished person with brilliant academic records and after completing B.Com degree, she has joined CA course and she was doing her apprenticeship under the Institute of Chartered Accountant of India while doing her CA Course and after she became a qualified Chartered Account, she was appointed as Accounts Executive in M/s. Motorola India Ltd., from November 1997 till December 1999 and rendered distinguished service and she has received an award in appreciation of outstanding service.

19. P.W. 1 and PW. 2 have further deposed that, on 15.3.2004, the deceased was transferred on promotion as Assistant Vice President to another associate company of M/s. General Electric Group known as GE Capital International Services with salary of Rs. 11,16,202/- p.a. Besides, she was entitled for bonus, annual performance, incentives, perquisites and other wide range of service benefits. They have stated that the deceased had a bright career, excellent future prospects with unlimited opportunities of promotions and would have risen very high in her career occupying top most position in the world with a very high income and deceased was about to be promoted as Vice President of M/s. GE Capital International Services and she had still 30 long years of service. Documents produced by the claimants at Ex. P9 to 22 and P31 to 37 corroborate their contentions. The respondents, except denying the educational qualifications, service rendered by the deceased at various reputed software companies and her last drawn salary, have not adduced any contra-evidence.

20. As per the date of birth of deceased mentioned in her passport and driving licence which were produced at Ex. P25 and 26 respectively, she was born on

24.7.1973 and she was aged about 31 years as on the date of her death. She had 29 years of service left to retire on superannuation. Further, at the time of accident, the deceased was working against a permanent post in a reputed software company i.e. GE Capital and therefore, the Tribunal is justified in adding 50% of her salary to her income towards her future prospects.

21. Learned counsel for the insurer relying upon the Judgment rendered in Manavalagan''s case contends, first claimant-husband of the deceased being a salaried person cannot be considered as dependent legal heir of the deceased and second claimant minor daughter is the only dependent legal heir. Therefore, deduction of 1/3rd of the income of the deceased by the Tribunal towards her personal expenses is not proper.

22. Whereas, learned counsel for the claimants contends, claimants and deceased were residing together during the lifetime of the deceased. They had common roof. At the time of accident, the deceased was driving the car which was standing in the name of her husband. The deceased and the first claimant were sharing their income each other towards payment of house-rent, purchase of car and to meet other expenses of the family. Therefore, principle laid down in Manavalagan''s case is not applicable to the facts of the case. Deduction of 1/3rd of the income of the deceased by the Tribunal towards her personal expenses is just and proper.

23. Admittedly, the second claimant is a minor daughter and she is depending on the income of both the parents. The salary of her father may be sufficient to meet her educational expenses, but, if the income of both of her parents is made available, her comforts, status and luxury would have been higher.

24. As per the judgment of this Court in the case of Y.R. Nagaraju Vs. United India Fire and General Insurance Co. Ltd., , loss of dependency need not necessarily be confined to money-payments. It also includes goods and services. The loss of services of the deceased as wife and mother would also require to be sounded in terms of money. The loss of a mother for children of infant age and the areas in which the loss would be felt are such as cannot possibly be compensated in terms of money at all. But awards in money are given for some aspects of the loss recognized in law because the award of money-compensation is the only manner in which law compensates for the loss. Therefore, the claim made by the minor daughter for compensation on account of death of her mother alone is sufficient to deduct 1/3rd income of the deceased towards her personal expenses and to take 2/3rd of her income as her contribution towards family. Apart from that, in the instant case, all three of them namely deceased, her husband and daughter were residing in a common roof by sharing the income of the deceased and her husband towards payment of house rent, discharge of housing loan, site loan and car loan etc.

25. Ex. P. 29 which is the bank statement of the deceased discloses that certain amounts are paid to one Jyothi Shetty from the salary account of the deceased.

As per P.W. 1 the said Jyothi Shetty mentioned in Ex. P29 was her landlord and there is a lease agreement entered with Jyothi Shetty. That goes to show that the amounts in Ex. P29 which are paid to Jyothi Shetty by the deceased through cheques are relating to the rents of the house where deceased and the claimants were residing.

26. Ex. P. 39 are the copies of the sale deeds standing in the name of the deceased and her husband and they disclose that they had jointly purchased an apartment and a vacant site for Rs. 18,70,000/- and Rs. 12,30,000/- respectively. Ex. P. 39(1) shows some of the amount towards the sale consideration was paid to the vendor through Cheques of Citi Bank, HDFC Bank and ICICI Bank. Ex. P. 39(2) discloses some amounts were paid towards sale consideration amount to the vendor through DD of IDBI. P.W. 1 in his evidence has stated that the sale consideration amounts were paid to the vendors by him and his wife by borrowing loans from HDFC and IDBI bank.

27. Ex. P. 40 discloses the statement of HDFC loan standing in the joint names of PW. 1. Ex. P40 further discloses that both PW. 1 and the deceased were paying EMI of Rs. 23,495/- towards the loan. Hence, there is no merit in the contention of the insurer and Judgment relied upon by the learned counsel for the insurer is not applicable to the facts of the case. In the facts and circumstances of the case, the Tribunal is justified in deducting 1/3rd of income of the deceased towards her personal expenses and taking 2/3rd of her income as her contribution towards family.

28. Learned counsel for the claimants submits, the Tribunal is not justified in deducting Rs. 35 lakhs paid to the husband of the deceased by the employer of deceased under ''Personal Accident Insurance'' on account of death of deceased in the road traffic accident from the compensation amount payable to claimants under MV Act. He submits, except income tax and professional tax, no deductions under any other head is permissible. In support of his contention, he relied upon the Judgment of Apex Court in the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, and in the case of Vimal Kanwar and Others Vs. Kishore Dan and Others, .

29. Per contra, the learned counsel for the insurer contends that PW. 1 husband of deceased in his cross-examination has admitted that, as per Ex. P. 22 compensation under ''Personal Accident Insurance'' was paid by the employer of the deceased to the husband of the deceased. Therefore, he contends that the compensation determined by the Tribunal by deducting the said amount from the total compensation payable to the claimants, is in accordance with law. Otherwise, it would amount to double payment.

30. It is to be noted, in the appointment letter vide Ex. P22, the terms and conditions of appointment are mentioned. In that appointment letter, it is mentioned that deceased, in support of salary component, is entitled to ''Personal Accident Insurance'' upto Rs. 35 lakhs as per Company Policy and

Rules.

31. In the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, , the Supreme Court has held that the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual; amount under life insurance is received either by the insured after maturity or by his heirs after his death which may be accidental or otherwise on account of the contract for which insured contributes in the form of premiums; any amount received or receivable not only on account of the accidental death but that which could have come to the claimants even otherwise, could not be construed to the pecuniary advantage liable for deduction. The said view of the Apex Court is also followed by this Court in the case of Shaheed Ahmed Vs. Shankaranarayana Bhat and Another, .

32. In the case of Vimal Kanwar and Others Vs. Kishore Dan and Others, , the Supreme Court has held that even salary receivable by dependant claimant upon compassionate appointment due to victim''s death does not come within the periphery of MV Act to be termed as "pecuniary advantage" liable for deduction.

33. From the aforesaid decisions it is clear that except income tax and professional tax, no other amount is liable to be deducted from the salary of the deceased for the purpose of taking the income of the deceased to determine the compensation payable to the claimants under the provisions of Motor Vehicles Act as has been repeatedly held by this Court and the Apex Court. Therefore, the Tribunal is not justified in deducting Rs. 35 lakhs paid to first claimant-husband of deceased by the employer of deceased under ''Personal Accident Insurance'' from the compensation payable to the claimants.

34. Ex. P. 22 is the appointment letter dated 15-3-2004 issued by the GE Capital International Services, according to which, annual remuneration of the deceased is Rs. 11,16,202/- which includes basic salary, special allowances, HRA, company car, conveyance, reimbursement of medical expenses, etc. wherein the terms and conditions of the appointment are mentioned.

35. The deceased was used to be paid her salary by the employer through her bank account at CITI Bank, Bangalore. Ex. P. 29 is the statement of her Bank account for the period from 1.1.2004 to 27.6.2006.

36. Ex. P. 30 is Form-16 issued by the employer of the deceased for the accounting year 2004-05. As per Exs. P29 and 30, the income earned by the deceased for a period of 7 months from 1.4.2004 to 4.11.2004 (i.e. the date of accident) was Rs. 5,91,283/- and income tax deducted for the said period of seven months was Rs. 1,39,636/-. Thus, her monthly salary and monthly income tax payable was Rs. 84,469/-& Rs. 19,948/-respectively. So her annual salary income alone comes to Rs. 10,13,628/-. From the said amount of Rs. 10,13,628/-, an amount of Rs. 2,39,376/- towards income tax and Professional Tax of Rs. 2,400/- to be deducted. Therefore, total annual gross income of the deceased after deducting income tax and professional tax would be, Rs.

7,71,852/-. 50% of this amount i.e. Rs. 3,85,926/- has to be added to her income towards future prospects. Therefore, the annual income of the deceased would be Rs. 11,57,778/-. From the said amount of Rs. 11,57,778/-, 1/3rd has to be deducted towards the personal expenses of the deceased and 2/3rd has to be taken as her contribution towards her family. So, an amount of Rs. 7,71,852/- would be the contribution of the deceased to her family. The Tribunal, bearing in mind the fact that second claimant being the minor daughter of the deceased and also based on the age of the deceased (i.e. 31 years at the time of her death), has rightly applied the multiplier ''16''. So loss of dependency works out to Rs. 1,23,49,632/-(11,57,778/- x 2/3 x 16) and we award the same towards loss of dependency.

37. We confirm Rs. 40,000/- awarded by the Tribunal towards Move and affection'' of the second claimant, Rs. 25,000/- towards ''funeral and obsequies''. We award Rs. 40,000/- towards Moss of consortium'' in respect of first claimant as against Rs. 10,000/- awarded by the Tribunal and we award Rs. 10,000/- towards loss of estate as against Rs. 40,000/- awarded by the Tribunal. Thus, the compensation payable to the claimants under the various heads is as under:

38. Thus, the claimants are entitled to a total compensation of Rs. 1,24,74,632/- as against Rs. 58,41,000/- awarded by the Tribunal. Accordingly, we pass the following order:

MFA No. 1205/2010 filed by the claimants is allowed in-part. Claimants are entitled for an additional compensation of Rs. 66,33,632/- with interest at 6% p.a. from the date of claim petition till realization. Insurance Company, after deducting amount if any already paid is directed to pay the balance amount with interest at 6% within two months from the date of receipt of a copy of this Judgment. Amount in deposit if any is ordered to be transmitted to the Tribunal forthwith. The rate of interest, deposit and apportionment of compensation amount between claimants shall be in terms of the award passed by the Tribunal.

In view of allowing the appeal filed by the claimants and enhancing the compensation awarded by the Tribunal and confirming the finding of the Tribunal on negligence, MFA 54/2010 filed by the Insurance Company does not survive and accordingly, it is dismissed.

No order as to costs.

