

(2013) 02 KAR CK 0147

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 21198 of 2011 connected with Miscellaneous First Appeal No's. 25345, 25914, 25346 and 25347 of 2011 (MV)

Amarlal Pritamdev Singhani (Since Deceased) by his L.R.

APPELLANT

Vs

Dinesh Tukaram Patil and Others

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Citation : (2014) 1 ACC 694 : (2014) 1 AKR 166 : (2013) 5 KarLJ 501

Hon'ble Judges : H. Billappa, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : B. Dinakar Shetty and G.N. Raichur, for the Appellant; Shreevatsa S. Hegde, S.S. Niranjan, G.N. Raichur, Ravindra R. Mane, R.M. Kulkarni, Smt. Aruna Deshpande and B. Dinakar Shetty, for the Respondent

Judgement

H. Billappa, J.—These appeals arise out of the accident that occurred on 5-12-2006, at about 12.00 noon, on Highway No. 17, on account of the collusion between Santro Car bearing No. MH-09-AB-6460 and Mahindra Goods Jeep bearing No. MH-08-H-6527. Therefore, they are considered together and disposed of by this common judgment. MFA No. 21198 of 2011 has been filed by the owner of the Santro Car bearing No. MH-09-AB-6460 challenging the judgment and award passed in MVC No. 613 of 2007.

2. MFA No. 25914 of 2011 has been filed by the claimants in MVC No. 3208 of 2006 seeking enhancement.

3. MFA Nos. 25345 to 25347 of 2011 have been filed by the insurer of the jeep bearing No. MH-08-H-6257.

4. There is delay of 566 days in filing MFA No. 21198 of 2011. Therefore, I.A. No. 3 of 2012 has been filed by the appellants praying to condone the delay. The delay is explained saying that the appellant was not aware of MVC No. 613 of 2007. It is only during the pendency of MVC No. 3208 of 2006, the appellant

came to about MVC No. 613 of 2007 and therefore, there is a delay in filing the appeal.

5. The insurer of the jeep has opposed the application contending that the delay has not been properly explained.

6. There are conflicting views in respect of the same accident. Therefore, the matter needs to be considered on merits. Therefore, in the interest of justice we consider it proper to allow I.A. No. 3 and condone the delay. Accordingly, I.A. No. 3 of 2012 is allowed and the delay of 566 days in filing MFA No. 21198 of 2011 is condoned.

7. Briefly stated the facts are: That on 5-12-2006, the claimant in MVC No. 613 of 2007, the claimant in MVC No. 545 of 2007 and the claimant MVC No. 821 of 2007 along with deceased Amarlal Singhani, the owner of Santro Car, were travelling from Belgaum to Goa. When the car came near the place of accident, at about 12.10 hours, a Mahindra Goods Jeep bearing No. MH-08-H-6527 came from the opposite direction at high speed and dashed against the car. As a result of that, the inmates of the car sustained injuries and Amarlal Singhani died at the spot. The claimants in MVC No. 3208 of 2006 who are the L.Rs of the deceased Amarlal Singhani claimed compensation of Rs. 1,50,00,000/-. The inmates of the car have filed MVC Nos. 613, 545 and 821 of 2007. The Tribunal has awarded a sum of Rs. 71,000/- in MVC No. 613 of 2007 holding that the driver of the car was solely responsible for the accident. In MVC No. 545 of 2007 a sum of Rs. 91,000/-, in MVC No. 821 of 2007 a sum of Rs. 18,000/- with interest at 6% per annum from the date of petition till the date of realisation has been awarded holding that the drivers of both the vehicles were responsible for the accident and liability has been fastened on the owners and insurers of the car and also the jeep. Aggrieved by that, the owner of the car has filed MFA No. 21198 of 2011. The claimants in MVC No. 3208 of 2006 have filed MFA No. 25914 of 2011. The insurer of the jeep has filed MFA Nos. 25345 to 25347 of 2011.

8. The learned Counsel for the appellants in MFA No. 21198 of 2011 and MFA No. 25914 of 2011 submitted that the finding recorded by the Tribunal in MVC No. 613 of 2007 is totally incorrect and contrary to the evidence on record. Further they submitted that the Tribunal has failed to consider the evidence on record in proper perspective. They also submitted that the compensation awarded by the Tribunal in MVC No. 3208 of 2006 is inadequate and needs to be enhanced. They also submitted that the deceased Amarlal Singhani was a businessman and an income tax assessee and in spite of that, the Tribunal has taken the income of the deceased at Rs. 4,00,000/- p.a. which is totally incorrect. Therefore, they submit that the impugned judgment and award in MVC Nos. 613 of 2007 and 3208 of 2006 needs to be modified.

9. As against this, the learned Counsel for the insurer of the jeep submitted that the Tribunal in MVC No. 613 of 2007 has held that the driver of the car was solely

responsible for the accident and the Insurance Company of the car has satisfied the award and therefore, the finding recorded in MVC No. 613 of 2007 has become final and it amounts to res judicata. He also submitted that the finding recorded in MVC Nos. 3208 of 2006, 545 and 821 of 2007 is contrary to the evidence on record. Further he submitted that the insurer of the car has satisfied the award passed in MVC No. 613 of 2007 and therefore, the owner of the car is not an aggrieved person and the appeal is not maintainable. He therefore, submitted that the impugned judgment and award passed in MVC Nos. 3208 of 2006, 545 and 821 of 2007 cannot be sustained in law. He also submitted that the Tribunal has erred in fastening the liability on the insurer of the jeep. He therefore submitted that the appeals filed by the insurer of the jeep may be allowed.

10. The learned Counsel for the insurer of the car submitted that the Tribunal has erred in fastening the entire liability on the insurer of the car in MVC No. 613 of 2007. He also submitted that merely because the Insurance Company has paid the amount, it does not mean the owner cannot prefer an appeal.

11. We have carefully considered the submissions made by the learned Counsel for the parties.

12. The points that arise for our consideration are:

(1) Whether the accident has occurred due to the rash and negligent driving of the drivers of both the vehicles, namely, Santro Car bearing No. MH-09/AB-6527 and jeep bearing No. MH-08/H-6527?

(2) Whether the compensation awarded by the Tribunal in MVC No. 3208 of 2006 is just and proper?

(3) Whether the impugned judgments and awards call for interference?

13. Point No. 1.--The inmate of the car Sri Dinesh Tukaram Patil has filed MVC No. 613 of 2007 claiming compensation for the injuries sustained by him. The said case has been tried by II Additional Civil Judge (Senior Division) and Additional Motor Accident Claims Tribunal, Belgaum. The Tribunal has recorded a finding that the driver of the car was solely responsible for the accident and has fastened liability on the owner and insurer of the car.

14. MVC No. 3208 of 2006 has been filed by the L.Rs of the deceased Amarlal Singhani who was the owner and inmate of the car. MVC Nos. 545 and 821 of 2007 have been filed by the inmates of the car claiming compensation for the injuries sustained by them. MVC Nos. 3208 of 2006, 545 and 821 of 2007 have been tried by the Fast Track Court III and Additional MACT, Belgaum. The Tribunal has held that the drivers of both the vehicles namely the car and the jeep were equally responsible for the accident.

15. In MVC No. 613 of 2007, the claimant has deposed that the accident occurred due to the rash and negligent driving of both the vehicles. In MVC Nos.

3208 of 2006, 545 and 821 of 2007, P.Ws. 2, 4 and 5 have been examined.

16. P.W. 2 has deposed that while he was travelling along with the owner, namely, Amarlal Singhani in Santro Car bearing No. MH-09/AB-6460 from Belgaum to Panaji, a Mahindra Goods Tempo bearing No. MH-08/H-6527 came from the opposite direction from Panaji side at high speed and dashed against the Santro Car. As a result of that, the owner died at the spot. The inmates of the car sustained injuries. He has also stated he was present at the spot and the police removed the vehicles from the spot as it was a National Highway.

17. P.W. 4, the claimant in MVC No. 545 of 2007 has deposed that, on 5-12-2006, he was proceeding in Car No. MH-09/AB-6460 from Belgaum to Goa along with his employer. The driver of the car was driving the vehicle at a moderate speed. When the car came near the place of the accident, at about 12.10 hours, a Mahindra Jeep bearing No. MH-08/H-6527 came from the opposite direction at high speed and dashed against the car. As a result of that, they sustained injuries. The claimant in MVC No. 821 of 2007 Sri Vishwanath Hanamant Birje has deposed that on 5-12-2006 himself and others were proceeding from Belgaum to Goa in a Santro Car bearing No. MH-09/AB-6460 at about 12.10 hours and a Mahindra Goods Jeep bearing No. MH-08/H-6527 came from Mapusa side and the vehicle reached a curve on NH-17 and the accident occurred. He has stated that the accident occurred due to rash and negligent driving of both the vehicles.

18. The driver of the car has been examined as R.W. 1. He has deposed that on 5-12-2006, he was proceeding along with his employer in a Santro Car bearing No. MH-09/AB-6460 from Belgaum to Goa. At about 12"O clock, on Goa-Malape Road, near Malape, on NH-17, when he was driving the car towards Goa, a Mahindra Goods Jeep bearing No. MH-08/H-6527 came from the opposite direction at high speed. He applied the break and tried to control his vehicle. In spite of that, there was a head on collision between the Mahindra Jeep and the Car.

19. Ex. P. 1 is the complaint. It has been lodged by the Assistant Police Sub-Inspector. It is stated in the complaint, at the spot the Santro Car was coming down the slope towards the right side. Similarly, the Mahindra Jeep was proceeding up on the slope and the same was driven by the driver in the middle of the road. It is also stated, both the vehicles were at high speed and the accident has occurred due to the rash and negligent driving of both the drivers.

20. In Ex. P. 2(a), the translated version of the mahazar, it is stated that the spot of accident is situated on Malape-Nayabag road, on NH-17. At the accident spot two vehicles were standing dashing head on. The front portion of both the vehicles was damaged.

21. In MVC No. 613 of 2007, the claimant has deposed that the accident occurred due to the rash and negligent driving of both the drivers. The Tribunal placing reliance on the Mahazar and the sketch has held that the car driver was

solely responsible for the accident. In MVC Nos. 3208 of 2006, 545 and 821 of 2007 the inmates of the car and the driver of the car have been examined. They have deposed that the accident occurred due to the rash and negligent driving of both the drivers. Apart from this, the contents of Ex. P. 1-complaint and Ex. P. 2(a)-mahazar clearly indicate that the accident has occurred due to head on collusion of both the vehicles.

22. The contents of Ex. P. 7 sketch are contrary to the contents of Ex. P. 1, Ex. P. 2(a) and oral evidence. After Investigation charge-sheet has been filed against both the drivers. Apart from this, the driver of the jeep has not been examined. In the circumstances, it is clear, the accident has occurred due to head on collusion of both the vehicles. Both the drivers were equally responsible for the accident.

23. The learned Counsel for the insurer of the jeep placing reliance on the decision in Ramchandra Dagdu Sonavane (Dead) by L.Rs. and Others Vs. Vithu Hira Mahar (Dead) by LRs. and Others, , contended that the finding recorded in MVC No. 613 of 2007 to the effect that the car driver was solely responsible for the accident has become final as the insurer of the car has satisfied the award and it amounts to res judicata. It is difficult to believe this. The finding recorded in MVC No. 613 of 2007 has been challenged in MFA No. 21198 of 2011 by the owner. Apart from this, the owner of the car himself was a victim of the accident and his L.Rs have claimed compensation in MVC No. 3208 of 2006. The inmates of the car have claimed compensation in MVC Nos. 245 and 821 of 2007. In the said cases, the Tribunal has recorded a finding that the drivers of both the vehicles were responsible of the accident. Therefore, there is no merit in the contention that the finding recorded in MVC No. 613 of 2007 has become final and accordingly, it is rejected.

24. The drivers of both the vehicles were responsible for the accident. Merely because the Insurance Company has paid the amount, it does not mean the owner cannot prefer an appeal. The finding recorded by the Tribunal in MVC Nos. 3208 of 2006, 545 and 821 of 2007 that both the drivers were responsible for the accident is correct and it does not call for interference. Insofar as the finding recorded in MVC No. 613 of 2007 is concerned, it needs to be modified holding that the drivers of both the vehicles were responsible for the accident. Accordingly, Point No. 1 is answered holding that the drivers of both the vehicles, i.e., the car and the jeep were responsible for the accident equally.

25. Point Nos. 2 and 3.--In MVC No. 3208 of 2006, the Tribunal has awarded a sum of Rs. 46,20,000/- and after deducting 50% towards contributory negligence, has awarded a sum of Rs. 23,10,000/-. The deceased Amarlal Singhani was a businessman doing wholesale as well as retail business. He was an income tax assessee. The claimants have produced Exhibits P. 16, P. 17 and P. 18. Ex. P. 18 relates to the year subsequent to the accident. Therefore, we consider Exhibits P. 16 and P. 17. Ex. P. 16 is the income tax returns for the year 2005-2006. The net income after deduction of tax comes to Rs. 3,82,905/-. Ex.

P. 17 is the income tax returns for the year 2006-2007. The net income after deduction of tax comes to Rs. 6,70,850/-. The average of Exhibits P. 16 and P. 17 comes to Rs. 5,26,877.50 and it is rounded off to Rs. 5,26,880/-. In view of Santosh Devi Vs. National Insurance Company Ltd. and Others, , 30% needs to be added towards future prospects. If 30% is added, the income comes to Rs. 6,84,944/-. 1/4th needs to be deducted towards personal expenses of the deceased. If 1/4th is deducted, the loss of dependency per annum comes to Rs. 5,13,708/-. The deceased was aged 39 years at the time of accident. Therefore, the appropriate multiplier is 15. The compensation payable towards loss of dependency comes to Rs. 77,05,620/-.

26. The deceased was the owner of the car. The driver of the car was equally responsible for the accident. He has contributed 50% to the accident. Therefore, 50% needs to be deducted towards contributory negligence. If 50% is deducted, the balance comes to Rs. 38,52,810/-. Accordingly, a sum of Rs. 38,52,810/- is awarded towards loss of dependency.

27. The Tribunal has awarded a sum of Rs. 1,20,000/- towards loss of consortium, loss of love and affection, loss of estate, transportation and funeral expenses. We reduce it to Rs. 45,000/-.

28. The compensation payable comes to Rs. 38,97,810/- and the break-up is as follows:

29. The driver of the jeep has contributed 50% to the cause of accident. Therefore, the insurer of the jeep is liable to pay a sum of Rs. 38,97,810/- to the claimants in MVC No. 3208 of 2006.

30. The compensation awarded by the Tribunal in MVC Nos. 545 and 821 of 2007 is just and proper and therefore, it does not call for interference. Point Nos. 2 and 3 are answered, accordingly.

31. Accordingly, the appeal filed by the owner of the car in MFA No. 21198 of 2011 is allowed and the judgment and award passed by the Tribunal in MVC No. 613 of 2007 is modified holding that the owners and insurers of the car and the jeep are equally responsible. It is stated, the insurer of the car has already deposited the amount. The insurer of the car can recover 50% of the amount from the insurer of the jeep without initiating further proceedings.

32. The appeal in MFA No. 25914 of 2011 filed by the L.Rs of the deceased Amarlal Singhani is allowed and the judgment and award passed by the Tribunal in MVC No. 3208 of 2006 stands modified enhancing the compensation to Rs. 38,97,810/- from Rs. 23,10,000/- with interest at 6% p.a. from the date of petition till the date of realisation.

33. The appeal filed by the insurer of the jeep in MFA Nos. 25345 to 25347 of 2011 are hereby dismissed.

34. In MVC No. 3208 of 2006, the claimants are entitled for the enhanced

compensation as follows:

The claimant 1 i.e., the appellant 1 in MFA No. 25914 of 2011 Smt. Kavitha, the wife of Amarlal Singhani shall be entitled to Rs. 8,00,000/- with proportionate interest. The appellants 2 to 4 in MFA No. 25914 of 2011 shall be entitled to a sum of Rs. 2,00,000/- each with proportionate interest. The appellant 5 in MFA No. 25914 of 2011 shall be entitled to a sum of Rs. 1,87,810/- with proportionate interest.

35. Out of the amount awarded to the appellant 1, a sum of Rs. 7,00,000/- with proportionate interest shall be invested in fixed deposit in any nationalised bank for a period of five years. She is entitled to withdraw the interest accrued on it.

36. The entire amount awarded to the appellants 2 to 4, who are minors, shall be invested in fixed deposit in any nationalised bank till they attain majority and for a further period of five years. The appellant 1, the natural guardian of the appellants 2 to 4, shall be entitled to withdraw the periodical interest accrued on it.

37. Out of the amount of Rs. 1,87,810/- awarded to the appellant 5, a sum of Rs. 1,00,000/- shall be invested in fixed deposit in any Nationalised Bank for a period of five years. She is entitled to withdraw the interest accrued on it. The balance amount of Rs. 87,810/- shall be paid to her. The amount in deposit in MFA No. 21198 of 2011 shall be refunded to the appellant. The amount in deposit in MFA Nos. 23545 to 23547 of 2011 shall be transmitted to the Tribunal for deposit and disbursement.