

(2015) 09 KAR CK 0256

In the Karnataka High Court

Case No : M.F.A. Nos. 3935, 3936, 3585 and 3586 of 2014 (MV)

Boopathy

APPELLANT

Vs

Sreenivasan A. and Others

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 09 KAR CK 0256

Hon'ble Judges : N.K. Patil and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : Vishnu Hegde for SSP Lex Scientia, for the Appellant; R.L. Udaya Kumar, Advocate, for the Respondent

Judgement

N.K. Patil, J.—Two appeals by the owner of the Ambassador Car bearing Reg. No. KA.03.M.9607 and two appeals by the injured claimant and the husband of deceased Smt. Renuka are arising out of the judgment and award dated 05/02/2014, passed in MVC Nos. 3009/2011 & 3832/2011, by the XI Additional Judge, Court of Small Causes and Motor Accident Claims Tribunal, Bangalore (SCCH-12), (hereinafter referred to as "Tribunal" for short).

2. The Tribunal by its common judgment and award, has awarded a sum of Rs. 11,88,785/- and Rs. 9,20,364/- respectively, under different heads with interest at 6% p.a., from the date of petition till its realization against the claim of the injured claimant for a sum of Rs. 70,00,000/- in M.V.C. No. 3009/2011 on account of the injuries sustained by him and Rs. 30,00,000/- in M.V.C. No. 3832/2011, for the death of deceased Smt. Renuka, wife of the claimant in the road traffic accident, fastening liability on the owner of the Ambassador Car bearing Reg. No. KA.03.M.9607.

3. In brief, the facts of the case are:

"The injured claimant was aged about 32 years at the time of the accident. He was hale and healthy prior to the accident, working as an Assistant Manager

(Finance) and drawing the monthly salary of Rs. 70,000/- and deceased Smt. Renuka, wife of the claimant was aged about 24 years, studying ICSI after completing B.Com. doing tailoring and was earning Rs. 12,000/- per month. That at about 5.30 p.m., on 5.4.2011, the injured claimant was riding the Hero Honda Motor Cycle bearing Reg. No. KA.51.Q.5385 along with his wife, Smt. Renuka (deceased) as a pillion rider on the extreme left side on Bagalur Sarjapura road and when they came near VIP Garden, at that time, suddenly, the driver of the Ambassador Car bearing Reg. No. KA.03.M.9607 came from opposite direction i.e. from Bangalore side in a rash and negligent manner and dashed against the injured claimant's motor cycle and caused the accident. Due to which, injured claimant and his wife Smt. Renuka, pillion rider fell unconscious and sustained grievous injuries. Immediately, they were shifted to Sparsh Hospital. Smt. Renuka, took treatment as inpatient from 5.4.2011 to 13.6.2011 and succumbed to the injuries on 13.6.2011. Injured claimant took treatment from 5.4.2011 till 13.4.2011 underwent surgery, his right leg was amputated above knee on 6.4.2011 and thereafter, on the advise of the Doctor, he has taken bed rest and follow up treatment."

4. It is the further case of the injured claimant that, he spent reasonable amount towards medical expenses, conveyance and other incidental charges. On account of the grievous injuries sustained by him, his right leg was amputated above knee and due to which, he has suffered permanent disability and the Doctor has assessed the disability at 80% to the whole body.

It is the further case of the injured claimant and husband of the deceased that, his wife Smt. Renuka has succumbed to the injuries on 13.6.2011 on account of the grievous injuries sustained by her in the said accident. Due to her untimely death, he has suffered lot of mental pain and agony as he has lost his companion and it would affect his future happiness in life and it has to be compensated reasonably.

Therefore, injured claimant and husband of the deceased has filed claim petitions before the Tribunal under Section 166 of M.V. Act, claiming compensation against the owner and insurer of the offending vehicle for the injuries sustained by him and also for the death of his wife Smt. Renuka.

5. The said claim petitions had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petitions in part and awarded a sum Rs. 11,88,785/- as compensation under different heads on account of the injuries sustained by the injured claimant and a sum of Rs. 9,20,364/- on account of the death of the deceased Smt. Renuka, with interest at 6%p.a., from the date of petition till its realization excluding the compensation awarded towards future medical expenses to the injured claimant, fastening liability on the owner of the offending vehicle and dismissing the petitions against R3-Vinod Krishnan.

6. Being aggrieved by the said common judgment and award, the owner of the offending vehicle has filed two appeals contending that, the quantum of compensation awarded by the Tribunal on account of the injuries sustained by the injured claimant and on account of the death of the deceased Smt. Renuka is on the higher side and that the Tribunal has erred in fixing the liability on him and in issuing a direction to him to indemnify the entire award amount and therefore, it is liable to be set aside. Whereas, the injured claimant has filed two appeals seeking enhancement of compensation, on the ground that the compensation awarded on account of injuries sustained by him and on account of the death of his wife Smt. Renuka is on the lower side and is liable to be enhanced reasonably.

7. We have heard learned counsel appearing for the owner of the offending vehicle and learned counsel appearing for injured claimant and husband of the deceased and learned counsel appearing for R3.

8. It is the submission of the learned counsel Sri. Vishnu Hegde, appearing for owner in M.F.A. Nos. 3935/2014 and 3936/2014, at the outset that, the Tribunal has committed an error and irregularity without framing necessary issue with regard to the stand taken by him in his statement of objection that, he was not the owner of the Ambassador car bearing Reg. No. KA.03.M.9607 and it was registered in the name of Vinod Krishnan and therefore, he is not liable to pay any compensation to the claimants and that the Tribunal has also erred in fastening entire liability on him and therefore, it is not sustainable and is liable to be set aside. Further, he submits that, the compensation of Rs. 3,12,928/- towards loss of income during treatment period and Rs. 6,43,240/- towards expenses of artificial limb awarded by the Tribunal is on the higher side and is liable to be reduced.

9. Learned counsel Sri. R.L. Udaya Kumar, appearing for the injured claimant and husband of the deceased, inter-alia sought to substantiate that the reasoning recorded by the Tribunal in paras 42 to 50 is just and proper and after due evaluation of the oral and documentary evidence available on file. Further, he submits that, the Tribunal, after considering the endorsement issued by the jurisdictional RTO and placing reliance on the judgment of this Court reported in H.D. Chandrappa Vs. Smt. Hanumakka, and reported in National Insurance Co. Ltd. Vs. Deepa Devi and Others, has held that, as on the date of the accident, one Sri. Bhoopathy is the owner of the offending vehicle and therefore, he is liable to indemnify the award amount and 3rd respondent is not liable to indemnify and petitions against 3rd respondent is liable to be dismissed. The said reasoning given by the Tribunal in para-50 of its judgment is just and reasonable and it does not call for interference, nor there is any substance in the submission of the learned counsel appearing for the owner.

10. Regarding quantum of compensation awarded by the Tribunal on account of the injury sustained by the injured claimant, he submitted that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and

sufferings and towards loss of amenities, discomforts and unhappiness and what is awarded is on the lower side and is liable to be enhanced. To substantiate the said submission, he submitted that, injured claimant is aged about 32 years at the time of the accident, working as Assistant Manager and drawing the salary of Rs. 45,352/- per month as per Exs. P14 and 15. In the accident, injured claimant has sustained crush injury of right leg, fracture of shaft of right humerus with radial nerve palsy, fracture of shaft of right ulna, for that, he has taken treatment as inpatient for 8 days in Sparsh Hospital, underwent surgery, his right leg was amputated above knee, during the said period he underwent lot of pain and agony and has suffered permanent disability. He examined the Doctor as PW6, who has assessed the disability at 80% as the injured claimant's right leg was amputated above knee. But these aspects of the matter have not been considered or appreciated by the Tribunal or awarded reasonable compensation for the same. Therefore, he submitted that, reasonable compensation may be enhanced towards injury, pain and sufferings and towards loss of amenities, discomforts and unhappiness due to disability.

11. Regarding the compensation awarded by the Tribunal on account of the death of the wife of the injured claimant, learned counsel appearing for the injured claimant and husband of the deceased submitted that, the income of the deceased Smt. Renuka assessed by the Tribunal at Rs. 5,000/- per month is on the lower side and is liable to be reassessed, on the ground that, she was aged about 25 years, completed B.Com and doing ICSI Company Secretary Course and apart from that she was doing Tailoring and earning Rs. 12,000/- per month. Therefore, he submitted that the income of the deceased may be re-assessed atleast at Rs. 9 to Rs. 10 thousand per month, after deducting 50% towards personal and living expenses of the deceased and adopting the multiplier of "16" taking the age of the husband of the deceased, reasonable compensation may be awarded towards loss of estate. Further, he submitted that the Tribunal has erred in not awarding reasonable compensation towards loss of consortium, towards loss of love and affection and towards transportation and funeral expenses and therefore, the same may be enhanced reasonably in the light of the judgment of the Apex Court and this Court.

12. Further, learned counsel appearing for the injured claimant and the husband of the deceased submitted that, the Tribunal has erred in awarding interest at the rate of 6% p.a., in both the cases and therefore, it is liable to be enhanced atleast to 9 to 10% p.a. in the light of the judgment of the Apex Court and this Court and as the accident has occurred in the year 2011.

13. As against this, learned counsel Sri. H.C. Sundaresh, appearing for 3rd respondent-Vinod Krishnan, inter-alia, contended and substantiated the impugned judgment and award passed by the Tribunal is just and proper and after due consideration of oral and documentary evidence available on file. The Tribunal, after assigning cogent and valid reasons in paras-43 to 51 of its judgment, has justified in issuing a direction to the owner to indemnify the award

amount and dismissing the claim petition against 3rd respondent. Further he submits that, Ex. P25 and P26 establish that as on the date of the accident Sri. Bhoopathi is the absolute owner of the offending vehicle/Ambassador car bearing Reg. No. KA.03.M.9607 and he is in possession of the said vehicle. Therefore, interference by this Court is not called for.

14. After hearing the learned counsel for the parties and after perusal of the materials available on record, including the impugned common judgment and award passed by the Tribunal, the points that arise for our consideration are:

"(i) Whether the Tribunal has justified in fixing entire liability on the part of the owner of the Ambassador car bearing Reg. No. KA.03.M.9607, Sri. Bhoopathi?

(ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?"

Re. Point No. 1:

15. The occurrence of the accident and the resultant injuries sustained by the claimant and the death of the deceased Smt. Renuka, wife of the claimant are not in dispute.

Claimant is the injured as well as the husband of the deceased Smt. Renuka. Injured claimant is aged about 33 years, working as Assistant Manager and hale and healthy prior to the accident and on account of injuries sustained by him in the accident, his right leg was amputated above knee. Deceased Smt. Renuka was aged about 25 years, completed B.Com and doing ICSI Company Secretary Course and apart from that, she was doing tailoring work.

16. The Tribunal, after due consideration of the oral evidence of PWs 1 to 7 and Rws-1 and 2 coupled with the documentary evidence as per Exs. P1 to P55 and Exs. R1 and R3, placing reliance on the judgment of the Apex Court and this Court as referred above and after assigning cogent and valid reasons, has specifically referred that R3- Vinod Krishnan has sold the vehicle bearing Reg. No. KA.03.M.9607 in favour of Sri. Boopathy on 24.9.2003 and it is not the case of Boopathy that vehicle is in the custody of respondent No. 3. Further, the Tribunal has referred that Ex. P25 and Ex. P26 show that Sri. Boopathy has paid a sum of Rs. 1,250/- on 12.5.2011 and on 8.8.2011 at RTO, Hosur, in respect of vehicle bearing No. KA.03.M.9607 regarding fee for transfer of vehicle in his name and so it is clear that he was in the custody of the vehicle and he was the owner as on the date of the accident. Further, the Tribunal has observed from the contents of Ex. P24-letter issued by the RTO Bangalore North, that, it is clear that R3-Vinod Krishnan has informed regarding the sale of the vehicle to one Sri. Boopathy and also demanded to issue clearance certificate in favour of Regional Transport Authority, RTO East and Ex. P25, challan shows that amount paid is Rs. 1,250/- and name of the person who had paid is Boopathy as discussed in para-47 of the judgment and after elaborately discussing the law laid down by the Apex Court and this Court in paras 48 to 50, has opined that R1-Boopathy is

the owner of the offending vehicle as on the date of accident and therefore, R3-Vinod Krishnan is not liable to indemnify the act of the respondent Nos. 1 and 2 and accordingly dismissed the petitions against R3-Vinod Krishnan. Further, the Tribunal has opined that, accident has occurred solely due to the rash and negligent act of the driver of the Ambassador car bearing Reg. No. KA.03.M.9607 and therefore, R1-Boopathy has to indemnify the act of the respondent No. 2-driver and therefore, held that the driver and owner of the ambassador car are jointly and severally liable to pay the compensation and R1-Boopathy, being the owner of the ambassador car is liable to pay the entire compensation with costs and interest at 6% p.a. from the date of petition till the date of realization. The said reasoning given by the Tribunal after due appreciation of the oral and documentary evidence is just and proper and therefore, it does not call for interference, nor we find any substance in the ground urged by the owner of the ambassador car and in the memorandum of appeals and also in the submission made by learned counsel appearing for owner and accordingly, we answer this point.

Re. Point No. 2:

17. Regarding compensation awarded by the Tribunal on account of the injuries sustained by the injured claimant in the accident is concerned, it emerges that, on account of the grievous injuries sustained by the injured claimant as per Ex. P3-Wound certificate, he has taken treatment as inpatient for 8 days, underwent surgery, his right leg was amputated above knee due to crush injury and suffered permanent disability. To prove the same, he examined the doctor as PW4. PW-4 has assessed the permanent disability at 80% to the whole body. After re-appreciation of the oral and documentary evidence available on record, it emerges that, the Tribunal, after assigning cogent and valid reasons has justified in awarding a sum of Rs. 7,617/- towards medical expenses, Rs. 55,000/- towards conveyance, nourishing food and attendant charges, Rs. 3,12,928/- towards loss of income during treatment period i.e. for 6 months 27 days x Rs. 45,352/- per month, Rs. 6,43,240/- towards purchase of artificial limb and Rs. 20,000/- towards future medical expenses and in not awarding any compensation towards loss of future income on the ground that after the accident injured claimant continued in his job and he is receiving the same salary as earlier to the accident and therefore, it does not call for interference.

18. However, the Tribunal has erred in not awarding reasonable compensation towards injury pain and sufferings and towards loss of amenities discomforts and unhappiness due to disability and it needs to be enhanced reasonably. Admittedly, on account of the grievous injuries sustained by the injured he has undergone treatment as inpatient for 8 days, underwent surgery, his right leg was amputated above knee and thereafter, on the advise of the doctor he has taken bed rest and follow up treatment. Doctor has assessed the disability at 80% to the whole body. During the said period and on account of permanent disability, he might have undergone lots of pain and agony, since the disability is

permanent in nature, it would affect his happiness in future life and he has to depend upon the artificial limb through out his life and therefore, it has to be compensated reasonably. Taking into consideration the nature of injuries and the percentage of disability suffered by the injured claimant as his right leg was amputated above knee, we deem it fit to award a sum of Rs. 1,50,000/- towards injury, pain and sufferings as against Rs. 1,00,000/- and Rs. 2,00,000/- towards loss of amenities, discomforts and unhappiness as against Rs. 50,000/- awarded by the Tribunal. Thus, the injured claimant is entitled for a total compensation of Rs. 13,88,785/- as against Rs. 11,88,785/- awarded by the Tribunal and there would be an enhancement of Rs. 2,00,000/-.

19. Regarding the compensation awarded by the Tribunal on account of the death of the deceased Smt. Renuka, wife of the injured claimant is concerned, it is the case of the learned counsel appearing for claimant, husband of the deceased that, deceased was aged about 25 years, she has completed her B.Com and doing ICSI Course and apart from that she was doing tailoring work and earning Rs. 12,000/- per month and therefore, the income of the deceased assessed by the Tribunal at Rs. 5,000/- per month is on the lower side and is liable to be enhanced. Having regard to the age, occupation and year of the accident, we reassess her income at Rs. 6,500/- per month. Since the claimant is the husband of the deceased, he is not dependent on the income of the deceased and hence, he is not entitled for compensation under the head "loss of dependency" and he is entitled for compensation under the head "loss of estate" only. As we have reassessed the income of the deceased at Rs. 6,500/- per month, 50% (Rs. 3,250/-) of which would be her savings per month. As the husband is aged about 33 years, the proper multiplier applicable is "16". Therefore, we re-determine the loss of estate at Rs. 6,24,000/- (Rs. 3,250/- x 12 x 16) and accordingly, it is awarded.

20. Having regard to the facts and circumstances of the case, we award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 50,000/- loss of love and affection, Rs. 25,000/- towards transportation and funeral expenses. However, a sum of Rs. 3,20,364/- awarded by the Tribunal towards medical expenses is just and reasonable and therefore, it does not call for interference. In all, the husband of the deceased is entitled to a total compensation of Rs. 11,19,364/- instead of Rs. 9,20,364/-. There would be an enhancement of Rs. 1,99,000/-.

21. As rightly pointed out by the learned counsel appearing for the injured claimant and the husband of the deceased, interest of 6% p.a. awarded by the Tribunal from the date of petition till its realization is on the lower side and is liable to be enhanced. In the light of the judgment of the Apex Court and this Court and since the accident is of the year 2011, we award the rate of interest at 9% p.a. from the date of petitions till its realization in the appeals instead of 6% p.a. as awarded by the Tribunal.

22. For the foregoing reasons, M.F.A. Nos. 3935/2014 and 3936/2014 filed by the owner offending vehicle are dismissed as devoid of merits and M.F.A. Nos.

3585/2014 and 3586/2015 filed by the injured claimant and husband of the deceased Smt. Renuka are allowed in part.

The impugned common judgment and award dated 05/02/2014, passed in MVC Nos. 3009/2011 and 3832/2011, by the XI Additional Judge, Court of Small Causes and Motor Accident Claims Tribunal, Bangalore (SCCH-12), are hereby modified, awarding the compensation of Rs. 2,00,000/- and Rs. 1,99,000/- respectively, with interest at 9% p.a., from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The owner of the offending vehicle is directed to deposit the enhanced compensation of Rs. 3,99,000/- with interest at 9% p.a., from the date of petition till the date of realization within a period of three weeks from the date of receipt of a copy of this judgment.

Immediately on deposit by the owner, out of the enhanced compensation of Rs. 3,99,000/- a sum of Rs. 2,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of injured claimant and husband of the deceased for a period of 05 years and renewable by another 05 years, with liberty to him to withdraw the interest accrued on it, periodically.

The remaining sum of Rs. 1,99,000/- with proportionate interest shall be released in favour of the injured claimant and husband of the deceased immediately.

The amount deposited by the owner of the offending vehicle in M.F.A. No. 3935/2014 and in M.F.A. No. 3936/2014 shall be transmitted to the jurisdictional Tribunal, immediately.

Office to draw the award, accordingly.