

(2015) 10 KAR CK 0020
In the Karnataka High Court
Case No : M.F.A. No. 1595 of 2014 (MV)

Branch Manager Shriram General Insurance Co. Ltd.	APPELLANT
Vs	
Vinoda and Others	RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 10 KAR CK 0020

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : A.N. Krishna Swamy, Advocate, for the Appellant; M.V. Maheswarappa, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the appellant-insurer is being aggrieved by the impugned judgment and award dated 05.11.2013 passed in MVC No. 1055/2012 on the file of the I Additional Senior Civil Judge and MACT-VII, Shivamogga, (hereinafter referred to as "Tribunal" for short).

2. The Tribunal by its judgment and award has awarded a sum of Rs. 18,91,500/- with interest at 6% per annum from the date of petition till the date of realization, fixing 75% contributory negligence on the part of the driver of the lorry and 25% negligence on the part of the rider of the motor cycle/deceased. It is the case of the insurer that 75% contributory negligence fixed on the part of the driver of the lorry is contrary to the evidence on record. The Tribunal ought to have fixed 50% contributory negligence each on the part of the driver of the lorry and on the part of the rider of the motor cycle/deceased. It is further case of the insurer that the quantum of compensation awarded by the Tribunal is disproportionate to the source of income and it is liable to be reduced. Therefore, the insurer has presented this appeal.

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

"The respondent No. 1 is the wife, respondent Nos. 2, 3 and 4 are the children, respondent Nos. 5 is the father of the deceased-S.G. Kumaraswamy and they filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the driver, owner and insurer of the lorry, on account of the untimely death of the deceased-S.G. Kumaraswamy in the road traffic accident. It is the case of the claimants that on 14.09.2011, the deceased had been to Shimoga in his motor cycle bearing registration No. KA-14-U-7661 from Bhadravathi, to attend to his personal work. At about 10.45 p.m., the deceased was returning to Bhadravathi, near Tank Bund of Nidige village. At that time, a lorry bearing registration No. KA-01/A-5862, was parked on the left side of the road near Nidhige village, in the dark night without any parking lights. The said lorry was parked in a manner so as to cause danger to human life and property. The deceased was moving on the left side of the road with moderate speed without noticing the said parked lorry and dashed against the parked lorry from its behind. Due to the impact, the deceased sustained head injuries and died on the spot. It is further case of the claimants that the deceased was aged about 57 years, working in Mysore Paper Mills Ltd., Bhadravathi and drawing a salary of Rs. 27,000/- per month. He was the only earning member of the family. Entire family was depending upon the income of the deceased. On account of his untimely death, the wife has lost her life partner and the children have lost love and affection, guidance, inspiration and security in life. His father is deprived to see the bright future of his son. It has also affected social, moral and economic condition of the family. Therefore, they were constrained to file a claim petition against the driver, owner and insurer claiming compensation. The said claim petition had come up for consideration before the Tribunal. The Tribunal after appreciating the oral evidence of PWs.1 to 3 and RW.1 and documentary evidence Exs.P1 to P18, allowed the claim petition in part, awarding compensation of Rs. 18,91,500/- with interest at 6% p.a., from the date of petition till the date of realization by fixing 75% contributory negligence on the part of the driver of the lorry and 25% on the part of the rider of the motor cycle/deceased. Not being satisfied with the impugned judgment and award passed by the Tribunal, the appellant/insurer has presented this appeal, redressing its grievance as stated supra."

4. Sri. AN. Krishna Swamy, learned counsel for the insurer, at the outset, submitted that the Tribunal has erred in fixing only 25% contributory negligence on the part of the rider of the motor cycle/deceased instead of fixing 50%. Further, he is quick to point out that the Tribunal further erred in adding 30% of the income towards future prospectus of the deceased. Further, he vehemently submitted that as per Ex. P16 the charge-sheet filed by the jurisdictional Tribunal, accident has occurred due to the negligent act of the rider of the motor cycle and also driver of the lorry, which is not in dispute. As per Ex. R1-sketch there was about 19 feet space in the road from the place of stationed lorry. The deceased was riding the motor cycle and there was sufficient road width for moving two wheeler and he ought to have taken little care at the time of riding

of the motor cycle. Even if the lorry was not parked without giving any indication, he had the easy access to move his vehicle. But he was coming in a rash and negligent manner and without seeing the parked lorry, hit the back side of the lorry and caused the accident. Entire contributory negligence is on the part of the deceased rather than the driver of the lorry. This aspect has not been considered or properly looked into by the Tribunal. Therefore, he submitted that the impugned judgment and award may be modified by fixing atleast 50% contributory negligence on the part of the rider of the motor cycle/deceased and by reducing the quantum of compensation awarded by the Tribunal.

5. As against this, Sri. M.V. Maheswarappa, learned counsel for the claimants, inter alia, contended that the impugned judgment and award passed by the Tribunal is just and proper and after due appreciation of the oral and documentary evidence available on record. Therefore, interference by this Court is not called for. To substantiate that, he is quick to point out that Ex. R1 sketch shows that the lorry has been parked on highway from Shimoga to Bhadravathi without indicator and if there was indicator, there was no scope for accident by the rider of the motor cycle. This aspect has been considered by the Tribunal and the Tribunal has rightly fixed 75% contributory negligence on the part of the driver of the lorry and 25% on the rider of the motor cycle. Further, after going through the original records, he submitted that the reasoning given for adding 30% towards future prospects is sustainable in the light of the judgment of the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Therefore, he submitted that interference by this Court is not called for.

6. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the points that arise for our consideration are:

"i) Whether the Tribunal is justified in fixing 75% contributory negligence on the part of the driver of the lorry?

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

Re-Point No. 1

7. Occurrence of accident and resultant death of the deceased in the road traffic accident is not in dispute. Claimants are none other than the wife, children and father of the deceased. The deceased was aged about 57 years, working in Mysore Paper Mills Ltd., Bhadravathi, drawing a salary of Rs. 27,000/- per month. He met with an accident on 14.09.2012 at about 10.45 p.m. when he was going from Shimoga. When he reached near Tank Bund of Nidige village, he dashed his motor cycle against the parked lorry. Due to the impact, the deceased sustained head injuries and succumbed to the injuries on the spot. Ex. P16 charge-sheet is filed by the police authority against the rider of the motor cycle

and also the driver of the lorry, which is not in dispute. Further, it emerges from the evidence on record that Ex. R1-sketch shows that there was about 19 feet space in the road from the place of stationed lorry. The deceased was riding the motor cycle and there was sufficient road width for moving the two wheeler. If the deceased was riding the motor cycle in moderate speed, he could have avoided the accident. Parking the lorry without indicator is also not in dispute nor it is come up in the evidence that the driver of the lorry has given parking indicator. After careful evaluation of Ex. R1-sketch and Ex. P16-charge-sheet, it is established beyond reasonable doubt that, there is negligence on the part of the driver of the lorry and also on the part of the rider of the motor cycle. The question that arises for consideration is what is the percentage of contributory negligence that can be fastened on the motor cycle, after re-appreciation of oral and documentary evidence as discussed supra. After considering the contents of Exs.P16 and R1 and after re-appreciation of oral and documental evidence as discussed supra, we can safely re-fix the contributory negligence on the part of the rider of the lorry at 60% and 40% on the part of the rider of the motor cycle to meet the ends of justice. Hence, we modify the impugned judgment and award passed by the jurisdictional Tribunal, re-fixing contributory negligence at 60% on the part of the driver of the lorry and 40% on the part of the rider of the motor cycle/deceased.

Re-Point No. 2.

8. The respondent No. 1 is the wife, respondent Nos. 2, 3 and 4 are the children, respondent Nos. 5 is the father of the deceased-S.G. Kumaraswamy. On account of untimely death of the deceased, the wife has lost her life partner and the children have lost love and affection, guidance, inspiration and security in life. His father is deprived to see the bright future of his son. It has also affected social, moral and economic condition of the family. The deceased was aged about 57 years, working in Mysore Paper Mills Ltd., Bhadravathi and drawing a salary of Rs. 26,566/- per month after deducting professional tax and income tax. He was the only earning member of the family and the entire family was depending upon the income of the deceased. As rightly pointed out by the learned counsel for the appellant/insurer, the Tribunal has committed miscarriage of justice in adding 30% towards future prospects of the deceased. Taking the net income of the deceased at Rs. 26,566/- and deducting 1/3rd towards personal expenses, the contribution of the deceased towards his family comes to Rs. 17,711/- per month. Deceased was aged about 57 years, and appropriate multiplier is "9". Accordingly, we redetermine the loss of dependency at Rs. 19,12,788/- (Rs. 17,711/- x 12 x 9). Following the judgment of the Apex Court and this Court in host of judgments, we award Rs. 1,00,000/- towards loss of consortium, Rs. 1,25,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each claimants, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses. In all, the claimants are entitled for a compensation of Rs. 21,87,788/-, out of which 40% contributory negligence comes to Rs. 8,75,115/-. Thus, the claimants are entitled for total compensation

of Rs. 13,12,673/- as against Rs. 18,91,500/-. There would be reduction of Rs. 5,78,827/-.

9. In the light of the facts and circumstances referred above, the appeal filed by the appellant/insurer is allowed in part. The impugned judgment and award dated 05.11.2013 passed in MVC No. 1055/2012 on the file of the I Additional Senior Civil Judge and MACT-VII, Shivamogga, is hereby modified reducing a sum of Rs. 5,78,827/- with interest at 6% p.a. from the date of petition till its realisation.

Contributory negligence is re-fixed in favour of driver of the lorry and rider of motor cycle in the ratio of 60:40 as against 75:25 fixed by the Tribunal.

The insurer is directed to deposit the remaining compensation amount with interest within three weeks from the date of receipt of copy of this judgment.

The apportionment and manner of disbursement of compensation ordered by the Tribunal gets proportionately reduced to the extent of reduction of compensation made by this Court.

The amount in deposit by the appellant-insurer shall be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw the award, accordingly.