
(2015) 02 KAR CK 0275

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 5366, 5367 and 5369/2010 [MV]

Branch Manager United India Insurance Co. Ltd.

APPELLANT

Vs

Jeevan P.J. Desai

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 177

Penal Code, 1860 (IPC) — Section 279, 304-A, 337, 338

Citation : (2015) 02 KAR CK 0275

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : U. Abdul Khader, for the Appellant; Sunitha H. Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—Heard. The appeals are admitted and with the consent of learned Counsel appearing for the parties, they are taken up for final disposal.

2. Perused the records of MVC Nos. 424, 425 and 426 of 2007 which were pending on the file of the Court of Principal Motor Accident Claims Tribunal and Chief Judge, Court of Small Causes, Bengaluru.

3. The present appeals have been filed by the Insurer challenging the Judgment and Award dated 9.12.2009 passed in MVC Nos. 424, 425 and 426 of 2007 which were pending on the file of the Court of Principal Motor Accident Claims Tribunal and Chief Judge, Court of Small Causes, Bengaluru, on the ground of negligence being not attributed to the driver of the car in which the claimants were traveling.

4. What is argued before this Court by learned Counsel for the appellants-insurer is that the Tribunal has not properly analyzed oral and documentary evidence on record about the manner in which the accident took place. It is argued that when the alleged offending lorry was ahead of the car, the driver of the car should have left reasonable distance between the car and the lorry. In the light of the car

being driven at a high speed, that too in rash and negligent manner and having dashed against hind side of the lorry, the driver of the car himself was guilty of entire negligence.

5. All the three claimants have been examined as PW. 1, PW.2 and PW.3. Jeevan P.J. Desai, examined as PW.1 has deposed in paragraph-2 in his affidavit in lieu of his examination-in-chief, the manner in which accident took place, which reads thus:

"2. I submit that on 09/12/2006 at about 10.30 pm when I alongwith my friends was coming from Chennai to Bangalore in Car bearing Registration No. KA-05 MB 5769 and when the said car was coming in between Vadagur Gate and Ajjappanahalli on Kolar Mulabagal road [NH-4], a lorry bearing registration No. TN-55-3975 which was going in front of our car was being driven by its driver in a high speed and in rash and negligent manner and when the said lorry being driven, its driver stopped his lorry without giving proper signal. As a result of it the car in which I was proceeding rammed to the back side of the said lorry." 6. Similar is the evidence of PW.2 and PW.3 in regard to which the accident took place and it is found in paragraph-2 of the affidavit filed by PW.1 and PW.2 in lieu of their examination-in-chief. These witnesses have been cross examined.

7. It is suggested to all these witnesses that lorry was driven slowly by its driver on the proper side and that the car driver himself drove the car in a negligent manner and dashed against lorry on the hind side. This suggestion has been emphatically denied. Further suggestion has been made to PW.1 to PW.3 that they have colluded with the Police and false criminal case was filed against the driver of the lorry and therefore the Police papers do not have any authenticity.

8. The mahazar drawn at the spot by the Police after registration of the case is marked as Ex.P3. Ex.P5 is sketch stated to have been prepared by the Investigating Officer soon after visiting the spot. As could be seen from the sketch and the mahazar, lorry was proceeding from Chennai to Bengaluru near Mulbagal on the Highway. Admittedly, Ex.P5 sketch of the spot lorry was on the left side, distance between the damaged car and lorry appears to be few feet.

9. Learned Counsel for the appellants has relied upon the decision of the Hon''ble Apex Court rendered in the case of Raj Rani and Others Vs. Oriental Insurance Co. Ltd. and Others, .

10. In the said decision, the issue relating to contributory negligence has been discussed. As per the facts of the said case, truck had been parked in the middle of the road without parking lights on and the driver of the car was driving the car at a normal speed of 40 kmph. Owing to lights of another vehicle coming from the opposite direction, the driver sighted the truck only at last minute and could not avoid the accident resulting in his death. The High Court has held that driver of both the vehicles were equally negligent. The Apex Court affirmed the said finding.

11. Relying upon the said decision, learned Counsel for the appellants has argued that the said decision is aptly applicable to the facts of the case.

12. This Court is unable to accept the said submission. In fact, nothing has been culled out from the evidence of PW. 1 to PW.3 to suggest that car was driven in a rash and negligent manner and they were injured. What is argued by learned Counsel for the appellants is that credence cannot be attached to the evidence of PW.1 to PW.3 since they are claimants and beneficiaries. On the ground that witnesses were injured, their evidence cannot be brushed aside. Only caveat added is that their evidence must be evaluated carefully.

13. In the present case, the lorry and the car were both on the move. Three witnesses have specifically stated that lorry was being driven at high speed and it was stopped all of a sudden and as a result of the same, the driver of the car could not control the car and it dashed against the lorry from hind side.

14. It is true that the driver of the lorry has not been examined in this case. Being sitting in front portion of the lorry, he could not have seen as to which vehicle was seen from the hind side. As could be seen from Ex.P3, the mahazar drawn at the spot by the Police about the damaged car had stood at a distance of about 80 feet on the left side of the road and it was facing west. The entire front portion of the car had been damaged including the front glass and the radiators and even the seats inside the car had been damaged sufficiently. Approximate distance between lorry and the car was about 70 feet as mentioned in Ex.P3.

15. Admittedly, the road on which the accident took place is a Highway. The drivers of the vehicles are entitled to drive their vehicle speedily. The Police who are responsible officials in conducting investigation have chosen to conduct investigation. They have not only examined the injured witnesses but also the eye witnesses. Nothing came in the way of the Insured to have examined one of the eye witnesses.

16. Learned Judge of the Tribunal has made a detailed discussion about the manner in which the accident had taken place in the light of the depositions of PW. 1 to PW.3. Learned Judge of the Tribunal has come to the conclusion that there is no reason to disbelieve the contents of the charge sheet marked as Ex.P6. Even otherwise, the charge sheet had been filed against the driver of the lorry for the offences punishable under sections 279, 337, 338 and 304-A of IPC read with section 177 of IMV Act. It is also seen from the records that the lorry in question had been overloaded with bags of husk extending on both sides of the lorry and when the said husk bags touched the road side tree, the driver stopped the lorry without giving any signal and as such the car coming behind rammed against the lorry and the driver of the car died.

17. Considering the consistent evidence of PW.1 to PW.3, coupled with the contents of Ex.P1 to Ex.P6, the learned Judge of the Tribunal has come to the conclusion that the driver of the lorry was responsible for the accident in question. Such finding has been given after assessing the evidence on the

touchstone of intrinsic probabilities. There is no reason to interfere with regard to the factum and the manner in which the accident had taken place and the entire negligence attributed to the driver of the lorry.

18. Claimant Jeevan P.J. Desai in MVC No. 424/2007 has been awarded a sum of Rs. 7,76,465/- as compensation and the same is found in page 14 in the impugned Judgment and the same is reproduced below.

19. He had sustained grievous injuries as found in page 10 of the impugned Judgment reading as under:

"[a] Comminuted segmental fracture femur left

[b] Fracture ulna middle third left

[c] Fracture ulna upper 1/3rd right

[d] Comminuted fracture distal end radius right

[e] Fracture clavicle left

[f] Fracture maxilla [left zygomatic maxillary complex with orbital and maxillary complex] and

[g] Haemoperitoneum."

20. Only a sum of Rs. 30,000/- has been awarded under the head "pain and agony". In fact, said amount is on the lower side considering the number of injuries and gravity of fractures sustained by the claimant. His income is assessed at Rs. 12,117/- and the loss of income during laid up period is assessed for six months. Considering the number of fractures and gravity of injuries sustained by him, said amount does not require any interference.

21. A sum of Rs. 1,96,814/- has been spent towards medicines and treatment as are borne out of Ex.P12. He was inpatient in Hospital for 17 days. In all, a sum of Rs. 2,15,000/- has been awarded towards medical expenses and incidental charges. Taking into consideration, the number of days spent in the Hospital and the amount spent towards medicines and treatment, the amount awarded is quite reasonable and does not require interference.

22. The Tribunal has considered total disability insofar as future earning capacity is concerned as 16%. Hence a sum of Rs. 4,18,763/- has been awarded under the head loss of future income" and by oversight head is mentioned as loss of amenities". This also does not require any interference.

23. No amount is awarded under the head loss of amenities". Atleast a sum of Rs. 50,000/- should have been awarded under this head. A sum of Rs. 40,000/- is awarded under the head "future medical expenses". In view of the fixation of implant and the fractures he had undergone, this amount is quite reasonable.

24. In the light of awarding lesser amount under the head "pain and agony" and

in the light of awarding no amount under the head loss of amenities, pleasure in future life", the total amount awarded at Rs. 7,76,465/- is otherwise just and reasonable and does not call for interference.

25. L. Pradeep Kumar, claimant in MVC No. 425/2007 has been awarded a sum of Rs. 10,11,057/- as found in page 18 of the impugned Judgment and the same is reproduced below.

26. He had sustained grievous injuries as found in page 15 of the impugned Judgment.

"[a] Fracture of BB [both bones] right leg.

[b] Comminuted fracture right olecranon

[c] Fracture of left clavicle

[d] Fracture nasal complex with disruption of nasal bones

[e] Cartilage and right sided haemothorax."

27. Only a sum of Rs. 20,000/- is awarded under the head "pain and agony" and it is on the lower side. Considering his income at Rs. 17,508/-, a sum of Rs. 78,787/- is awarded as loss of income during laid up period i.e., for 4 1/2 months and this also appears to be quite reasonable.

28. An amount of Rs. 3,15,000/- has been awarded under the head "Medical expenses and incidental charges". The same is borne out of the valid medical records. He was in the hospital from 10.12.2006 to 29.12.2006 and from 22.7.2007 to 24.7.2007. Considering the number of days spent in the hospital and the amount spent towards medicines and treatment, this amount is quite reasonable.

29. A sum of Rs. 5,67,270/- is awarded under the head loss of future income" and by oversight it is mentioned as loss of amenities". The total disability is reckoned at 15% and substantial reasons have been assigned by the Tribunal to consider the said disability which affects his future income. This amount also does not require any interference.

30. No amount is awarded under the head loss of future amenities, pleasure in future life". In view of the gravity of the injuries and the types of operation undergone and fixation of implants, a sum of Rs. 30,000/- awarded under the head "future medical expenses" is quite reasonable.

31. In the light of awarding lesser amount under the head "pain and agony" and in the light of not awarding any amount under the heading loss of amenities, pleasure in future life", amount of Rs. 10,11,057/- awarded as total compensation is otherwise just and reasonable and does not require interference.

32. Paneendra Kumar, claimant in MVC No. 426/2007 has been awarded in all a sum of Rs. 1,99,059/- as found in page 23 of the impugned Judgment which is

reproduced as under:

33. He had sustained grievous injuries as found in page 19 of the impugned Judgment.

"[a] Laceration left temporal region 5 x 1 cm. bone deep

[b] Fracture of left forearm bone lower 1/3rd

[c] Superficial abrasion left eyebrow"

34. He was initially treated in R.L. Jalappa Hospital and later on was shifted to Lakshmi Hospital and was treated as inpatient for one week. The amount awarded under the head "pain and agony" is very much on the lower side. Little higher amount should have been awarded under the said head. Loss of income during laid up period for three months by assessing his income at Rs. 16,353/- is supported by valid documents. Hence, the amount under this head does not call for interference.

35. In all, a sum of Rs. 30,000/- is awarded under the head "medical expenses and incidental charges" and this amount also does not require interference.

36. A sum of Rs. 1,00,000/- is awarded under the head loss of amenities". In the light of not awarding any amount for future medical expenses and disability and loss of future income, a sum of Rs. 1,99,059/- awarded as total compensation is otherwise just and reasonable. Hence, on reassessment of the entire order of the Tribunal, this Court is of the opinion that no ground is made out to interfere with the Award of the Tribunal in regard to the manner in which accident took place, negligence attributed to the driver of the lorry and the amount of total compensation awarded to all these claimants.

37. Hence, the following order.

ORDER

38. Accordingly, appeals are dismissed.

39. 60% of the amount awarded as compensation has already been deposited by the Insurer before the Tribunal and out of the same, 10% is ordered to be kept in fixed deposit in Karnataka Bank, City Civil Court Branch, Bengaluru. The said amount along with statutory amount deposited before this Court be sent back to the Tribunal.

40. Office to do the needful in this regard.