

(2015) 03 KAR CK 0282

In the Karnataka High Court

Case No : M.F.A. Nos. 7385 and 7386 of 2014 (MV)

B.V. Nanjundegowda and Others

APPELLANT

Vs

Praveen Shetty and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 03 KAR CK 0282

Hon'ble Judges : N.K. Patil, J.

Bench : Single Bench

Advocate : Kavitha H.C., for the Appellant

Final Decision : Dismissed

Judgement

N.K. Patil, J.—These two appeals by the appellants- claimants are directed against the impugned common judgment and award dated 01/08/2014, passed in MVC Nos. 919/2012 and 920/2012 respectively, by the II Additional Senior Civil Judge and Motor Accident Claims Tribunal, Hassan, (for short" Tribunal").

2. By its common judgment and award, the Tribunal has determined a sum of Rs. 1,83,480/- and Rs. 2,74,000/- and awarded a sum of Rs. 1,10,000/- and Rs. 1,64,400/- respectively, with interest at 6% p.a., from the date of petition till its realization (excluding interest on future medical expenses in MFA No. 7386/2014, as against the claim made by the appellants/claimants for a sum of Rs. 4,00,000/- and Rs. 6,00,000/- respectively, after deducting 40% towards contributory negligence on the part of the rider of the motor cycle, on account of the injuries sustained by them in the road traffic accident.

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

"That on 22.1.2012 at about 5.30 p.m. the appellant in M.F.A. No. 7386/2014 was riding the motor cycle bearing Reg. No. KA.17.Q.3152 along with appellant in M.F.A. No. 7385/2014 as pillion rider. When they came near Diary circle, Hassan, at that time, from the opposite direction, the driver of the Car bearing

Reg. No. KA.05.AB.0237 drove the same in a rash and negligent manner, turned the car all of a sudden towards Bangalore without giving signal, dashed against motor cycle and caused the accident. Due to which, appellants fell down and sustained injuries. Immediately, they were shifted to Mangala Hospital, Hassan, where they took treatment as inpatients, underwent surgery, implants were inserted and thereafter, on the advice of the doctor, they have taken bed rest and follow up treatment." 4. It is the further case of the appellants that, they spent considerable amount towards medical expenses and other incidental charges and on account of the injuries sustained they suffered permanent disability. Therefore, they have filed the claim petitions before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents.

5. The said claim petitions had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petitions in part and determined the compensation of Rs. 1,83,480/- and Rs. 2,74,000/- and awarded Rs. 1,10,000/- and Rs. 1,64,400/- respectively, after deducting 40% towards contributory negligence on the part of rider of the motor cycle with interest at 6% p.a., from the date of petition till its realization (excluding interest on future medical expenses in MFA No. 7386/2014). Being aggrieved by the finding of the Tribunal that there was 40% negligence on the part of the appellant in M.F.A. No. 7386/2014, the rider of the Motor cycle and being dis-satisfied with the quantum of compensation, the appellants have presented these appeals.

6. I have heard learned counsel appearing for the appellants.

7. The submission of learned counsel appearing for the appellants, at the outset is that, the Tribunal has erred in fixing 40% negligence on the part of the appellants in M.F.A. No. 7386/2014, the rider of motor cycle and 60% on the part of the driver of the car on the ground that, the charge sheet is filed against the rider of the motor cycle and driver of the car. She further submits that, the Tribunal ought to have taken into consideration that the vehicles involved in the accident are car and motor cycle and car is a heavy vehicle and therefore, it ought to have fixed negligence on the part of the driver of the car since the accident has occurred in the circle. Therefore, she submitted that the contributory negligence fixed at 40% on the part of the rider of the motor cycle is on the higher side and is liable to be reduced. She further submits that, the quantum of compensation awarded by the Tribunal on account of the injuries sustained by the appellants in these appeals is inadequate and it requires to be enhanced. To substantiate the said submission, she submitted that the Tribunal ought to have awarded reasonable compensation taking into consideration mental pain and agony, nature of injuries sustained, the nature and period of treatment taken by the appellants and as they have to suffer the disability and discomforts through out their life and it would affect their earning capacity, but these aspects of the matter have not been considered or appreciated by the Tribunal while awarding compensation. Therefore, she submitted that the

impugned common judgment and award is liable to be modified.

8. After hearing learned counsel for the appellants and after careful perusal of the materials available on file, including the impugned common judgment and award passed by the Tribunal, it emerges that, appellants/claimants are the rider and pillion rider of the motor cycle bearing Reg. No. KA.17.Q.3152. When they were coming near diary circle, Hassan, at that time, the driver of the car bearing Reg. No. KA.05.AB.0237 came in a rash and negligent manner, turned the car all of a sudden towards Bangalore without giving signal and dashed against the motor cycle. Due to which, they fell down and sustained injuries and taken treatment at Mangala Hospital, Hassan. It is the case of the learned counsel appearing for the appellants that, on account of the injuries sustained by the appellants, they spent considerable amount towards medical expenses, conveyance and other incidental charges as they have taken treatment as inpatient, undergone surgery and thereafter, taken bed rest and follow up treatment and therefore, the compensation awarded by the Tribunal under different heads is inadequate and it requires to be enhanced. But, except making oral submission, no credible documents have been produced by the learned counsel appearing for appellants/claimants to prove the same. The Tribunal, after critical examination of the oral and documentary evidence available on file, taking into consideration the nature of injuries sustained, the nature and duration of the treatment taken by the appellants, has justified in awarding the compensation under different heads which is just and proper and it does not call for interference.

9. Further, it is the specific submission of the learned counsel appearing for appellants/claimants that, the contributory negligence fixed by the Tribunal at 40% on the part of the rider of the motor cycle is on the higher side and is liable to be reduced on the ground that, car is a big vehicle and motorcycle is a small vehicle. To substantiate the said submission, she submitted that, from the contents of FIR, IMV report and evidence of PW2 it is clear that the accident has occurred on account of the rash and negligent driving by the driver of the car. It is significant to note that, the Tribunal, after evaluation of the oral evidence of P.Ws. 1 and 2 and the documentary evidence like Ex. P1-FIR, Ex. P2-Complaint, Ex. P3- Spot mahazar, Ex. P4-sketch, Ex. PP5-Chargesheet, Ex. P7- IMV report and the evidence of PW2, has observed that, P.W. 1 has voluntarily stated that, after causing accident car has gone and stood out of the road as per Ex. P4 and admitted the suggestion that police have filed charge sheet against the driver of car and P.W. 1/rider of the motor cycle. Further, he has admitted the suggestion that P.W. 1 did not possess DL to ride motor cycle as shown in Ex. ER2/DL extract produced by R.W. 1. Further, the Tribunal has observed that, in the cross examination of PW2, he denied that accident occurred on account of rash and negligent riding of the motor cycle by his son who is P.W. 1 and apart from oral and documentary evidence as already stated P.W. 1 has produced police documents which show that in connection with the said accident, at the first instance police had registered case on P.W. 1/rider of the motor cycle on the

strength of the complaint/Ex. P2 given by the driver of the car namely Selvaraj. Ex. P4-rough sketch, shows that near diary circle, Hassan, accident has occurred between car and motor cycle and as per rough sketch, both the vehicles are shown on southern side of the Hassan-Arasikere road. Further, the Tribunal has observed that, Ex. P5 is the chargesheet filed against Srikantegowda and V. Selvaraj who are the rider of the motor cycle in MVC No. 920/2012 and driver of the car respectively and Ex. P7-IMV report show the extensive damages caused to both the vehicles and on perusal of Ex. P7 it could be seen that front side of the car and front wheel of the motor cycle are damaged. Inspector of motor vehicle has opined that accident was not due to mechanical defect of both the vehicles. Further, the Tribunal has observed that, the owner of the car has not examined the driver of the car but the police records show that on account of negligent driving of car by its driver and negligent riding of motor bike by its rider accident has occurred. Taking these factors into consideration and the nature of the vehicles involved in the accident and the spot of accident, the Tribunal has fixed the negligence at 60% on the part of the driver of the car and 40% negligence on the rider of the motor cycle after recording the finding of fact. The said finding of fact recorded by the Tribunal after due consideration of the oral and documentary evidence available on file is just and proper and therefore, interference by this Court is not called for. Therefore, the above submission of the learned counsel appearing for the appellants is liable to be rejected and accordingly, it is rejected.

10. For the foregoing reasons, the appeals filed by the appellants are liable to be dismissed as devoid of merits and accordingly, they are dismissed.