
(2015) 12 KAR CK 0158
In the Karnataka High Court
Case No : MFA No. 201712/2014 (MV)

Divisional Manager, The National Insurance Co. Ltd.	APPELLANT
Vs	
Laxmi Bai and Others	RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 134(c)
Penal Code, 1860 (IPC) — Section 279, 304(a)

Citation : (2015) 12 KAR CK 0158

Hon'ble Judges : A.S. Bopanna and G. Narendra, JJ.

Bench : Division Bench

Advocate : Preeti Patil, Advocate, for the Appellant; Ganesh Naik, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

G. Narendra, J.—Heard the learned counsel for the appellant and the respondents.

2. The parties are referred to by their rank assigned before the tribunal.

3. The appellant is the second respondent before the tribunal. This appeal is preferred by the insurer/second respondent being aggrieved by the judgment and award rendered by the Senior Civil Judge & MACT, Shorapur, sitting at Shahapur in MVC No. 114/2010.

4. The facts of the case are that;

"The claimants are the mother and father of the deceased. The case of the claimants is that on 29.09.2009 at about 4.30 p.m. their daughter Miss. Vijayalaxmi who was then pursuing her course in 3rd year B.E. (Electronics and Communication) stream was returning home after attending her tuition classes on Activa Honda motorcycle. That the first respondent being the driver of the auto rickshaw bearing registration No. KA-32/A-8069 came from the opposite direction and dashed against the Activa Honda motorcycle being ridden by their

daughter. It is further alleged that the first respondent was driving the offending auto rickshaw vehicle in a rash and negligent manner endangering the life of pedestrians and other motor vehicle users."

5. That the accident was caused on account of the rash and negligent driving by the driver of the offending vehicle. The daughter of the claimants fell down from her moving motorcycle and suffered grievous injuries and that the accident occurred in front of the KBN hospital where she was moved for initial treatment and thereafter due to the nature of the injuries she was shifted to Yashoda Hospital at Hyderabad on 30.09.2009 and was treated there till 09.10.2009. Thereafter she was shifted to Dhanwantri Hospital Gulbarga on 09.10.2009 and was in the ICU till 14.10.2009 on which date at about 8.10 p.m. the claimants lost their beloved daughter.

6. It is alleged that the accident was caused on account of the rash and negligent driving of the offending vehicle only. That the claimants have stated they have incurred medical expenses in excess of Rs. 5-Lakhs and also invaluable loss of their loving daughter and hence they have laid a claim for a sum of Rs. 52-Lakhs as compensation from the second respondent. The first respondent who is the driver cum owner of the offending vehicle has entered appearance and denied all the petition averments. He has denied the commission of the accident and in fact has contended that the deceased has fallen on her own and sustained the injuries due to her rash and negligent driving of the Aactiva Honda motorcycle. He has also contended that the deceased did not possess a valid driving license at the time of the accident and hence he is not liable to pay any compensation. He has also contended that the offending vehicle is insured with the respondent insurance company and the insurance policy was in force from 07.01.2009 till 06.01.2010 and the policy is bearing No. 604001/31/08/6300004084. He has also contended that he was holding a valid driving license bearing No. 409/95-96, which is valid up to the year 2012. The second respondent has entered appearance and categorically denied the petition averments. It has contended that the offending vehicle was insured with it and the first respondent had not informed it about the particulars of the accident as required under Section 134 (c) of Motor Vehicle Act, which is mandatory on the part of the owner of the vehicle. In view of the failure of the owner/insured tantamounts violation of the provisions and terms and conditions of the policy and hence it stood absolved of the same and prayed for dismissal of the petition.

7. In view of the above pleadings the tribunal formulated the following six issues;

"1. Whether the petitioners prove that on 29.09.2009 at 4.30 p.m. the deceased Vijayalaxmi was proceeding on her motor cycle Hero Active No. KA-32/S-9138 on Court road at Gulbarga, at that time the auto bearing No. KA-32/A-8069 came from opposite side, near the Modi Hospital in rash and negligent manner with high speed dashed to the vehicle of the deceased thereby the deceased Vijayalaxmi sustained grievous head injury, shifted to Basaveshwar Hospital Gulbarga, and other various hospitals and died in the Dhanwantari Hospital, due

to the said injuries on 14.10.2009 at 8.10 p.m.?

2. What was the age, occupation and income of the deceased at the time of accident?

3. Whether the respondent No. 1 proves that, the driver of the offending vehicle had valid and effective driving license to drive the vehicle and the insurance is valid with the respondent No. 2. On the date of accident?

4. Whether the respondent No. 2 proves that the offending vehicle bearing No. KA- 32/A- 8069 was not insured with the respondent No. 2, and the driver of the offending vehicle had not having valid and effective driving license to drove the same on the date of accident?

5. Whether the respondent No. 2 further proves that, the respondent No. 1 had violated the policy conditions?

6. What order or award?"

8. The parties went to trial on the above issues and the first claimant/petitioner got herself examined as P.W. 1 and got marked Exs. P-1 to P-50. The respondents have not tendered any documentary evidence nor have they stepped into the witness box to let in evidence. With the above circumstances, the tribunal rendered a finding affirming the issue No. 1 and partly allowing issue No. 2. It also rendered a finding in the negative regarding issue Nos. 4 and 5.

9. The appeal is preferred on the twin grounds of;

"(a) non involvement of the offending vehicle; and

(b) the quantum awarded is exorbitant and without basis;"

10. Learned counsel for the insurer would submit that the FIR and in the original complaint the number of offending vehicle is not mentioned and hence the finding of the tribunal on issue No. 1 is liable to be set aside.

11. This is taken as preliminary ground of appeal and is examined a-priori. It is seen that initially a complaint was lodged by the brother of the deceased stating that his sister the deceased had informed that, she was hit by an auto rickshaw and she could identify the driver and the vehicle if she sees them. On the said complaint a FIR was registered and a Crime No. 175/2009 was registered by the Traffic Police Station at Gulbarga and the same is produced as Ex. R-1. After the demise the complainant is stated to have made a further statement regarding the identity of the auto rickshaw in the statement. It is mentioned that he enquired with the watch and ward security of staff of KBN hospital and that one of the security (named in the statement) had given him the details of the offending vehicle and hence he was furnishing the details of the offending vehicle. The said further statement is marked as Ex. P-7. Thereafter the jurisdictional police have filed a charge sheet as per Ex. P-6 in C.C. No. 1286/2010. The driver of the offending vehicle has been prosecuted for the

offence punishable under Sections 279 and 304 (a) of IPC. Ex. P-8 is the spot mahazar, Ex. P-9 rough sketch of the accident spot, Ex. P-10 is the inquest mahazar, Ex. P-11 is the seizure mahazar of the offending vehicle, Ex. P-12 is the motor vehicles inspector's report, Ex. P-14 is the post mortem report, which has certified that the death occurred on account of haemorrhage shock with intra cerebral haemorrhage as a result of head injury. Ex. P-15 is the driving license of the deceased.

12. On the strength of the above documents and after perusal of the same, the tribunal arrived at a conclusion that in fact it is the offending vehicle which had caused the accident and delivered the judgment awarding compensation to the tune of Rs. 34-Lakhs under various heads.

13. Learned counsel for the appellant would submit that the finding on this point is liable to be set aside on the ground that the offending vehicle was not mentioned in the FIR/complaint. A perusal of Ex. P-1 being the FIR would clearly state that the vehicle involved is an auto rickshaw but the name of the driver and number of the vehicle is not known. In fact, the complainant i.e. the brother of the deceased had narrated the injuries suffered by his sister and that his sister informed him the accident was caused by an auto rickshaw and she would identify the vehicle and driver if she sees them. Thus, Ex. P1 i.e. FIR and complaint which came into existence at the earliest point of time i.e. on 30.09.2009 itself have identified the offending vehicle as an auto rickshaw. There is no dispute with regard to the place of the accident or the injuries suffered. The brother of the deceased has approached the jurisdictional police and given a further statement wherein he has stated that he had inquired with the watch and ward security staff of the hospital in front of which the accident had occurred and the said security staff who has been named in the statement had identified the offending vehicle. On the basis of the said information, he approached the jurisdictional police and tendered further statement on 26.12.2009. On the strength of the additional statement the jurisdictional police have taken up further investigation and laid the charge sheet against the first respondent on 21.02.2010 in C.C. No. 1286/2010, which is produced as Ex. P-6. Thereafter, the investigating police have drawn the spot panchanama, mahazar and have also seized the offending vehicle. The vehicle has also been examined by the Motor Vehicle Inspector as Ex. P-12. The charge sheet i.e. Ex. P-6 elaborates the accident and also the witness, who have witnessed the offending vehicle causing the accident.

14. It is seen that the second respondent has not challenged the same though aware of the factum of prosecution of the offending vehicle. It is an accepted fact that the investigation report, FIR and charge sheet laid down by the police before the prosecuting Court are not conclusive evidence but have a persuasive value. In the instant case though both the respondents have denied occurrence of the accident and the involvement of the offending vehicle neither of them stepped into the witness box nor have they tendered any documentary evidence to

question the authenticity of the prosecution version or the version of the claimants. The evidence tendered by the claimants has gone unchallenged rather nothing has been elicited to contradict the claim of the petitioners. That being the case, the tribunal has rightly arrived at a conclusion holding that the offending vehicle is an auto rickshaw bearing registration No. KA-32/A-8069. No material is placed before this Court also to arrive at any other conclusion. In view of the same this Court concurs with the finding of the tribunal with regard to issue No. 1 holding that the vehicle belonging to the first respondent i.e. auto rickshaw bearing registration No. KA-32/A-8069 is the offending vehicle.

15. The appellant's counsel placed reliance on the citation reported in *Bajaj Allianz General Insurance Co. Ltd. Vs. B.C. Kumar and Yoganarasimha*, wherein the learned Single Judge of this Court has held that the plea of guilt entered by the alleged driver of the offending vehicle cannot be sole and conclusive proof of the accident and the tribunal ought not to place reliance wholly on the judgment of the Criminal Court for considering the issue of the factum of the accident and negligence. The said citation is inapplicable to the facts for the reason that the respondents, be it either the insured or the insurer, have not contested the allegations made against them before the tribunal. The evidence detailed on behalf of the claimants on the aspects of the case including the factum of the accident having not been controverted and no material having any bearing placed before this Court also, the only inescapable conclusion that can be drawn is that the finding of the tribunal based on the FIR, complaint, further statement for the complainant, charge sheet, spot mahazar, statement of the witnesses is correct and sustainable.

16. The counsel for the appellant has also relied upon another judgment of the Hon'ble Apex Court rendered in the case of *Ram Chandra Singh Vs. Savitri Devi and Others*. The appellant counsel has argued that a fraud has been perpetuated by naming the offending vehicle when the details of the offending vehicle are not forthcoming in the original complaint. At the cost of being repetitive, this Court holds that the said arguments of fraud does not hold water and is liable to be rejected at the threshold for the simple reason that it is a fact which has to be established by a specific plea and cogent evidence corroborating the plea. There is not even a plea before the tribunal nor in the grounds of appeal before this Court. The appellant has not tendered any evidence before the tribunal. That being the case, the argument of fraud deserves to be rejected and it is accordingly rejected.

17. The appellant has relied upon a judgment of the Hon'ble Apex Court in Civil Appeal No. 9858/2013 and a judgment of coordinate bench of this Court in MFA No. 100887/2014, to demonstrate that the quantum of damages awarded is excessive. In the first judgment the Apex Court has granted a lump sum of Rs. 7,00,000/- as compensation to compensate the death of an Engineering student. The judgment of the Hon'ble Apex Court relates to an accident which occurred on 20.01.2003.

In the judgment of the Co-ordinate bench of this Court, the bench has upheld the notional income of Rs. 3,000/- fixed by the tribunal even though the deceased was an Engineering student as in the present case. The accident therein had taken place on 04.06.2010. It is not known whether the said order has been appealed against or not.

18. In the present case the accident occurred in the year 2009. It is contended that the deceased was a bright student and that she had a bright future and would have earned a handsome salary. In fact the claimants have produced the salary certificate of a friend of the deceased. The deceased was pursuing the stream in Engineering in Electronics and Communication and had successfully completed four semesters. This only demonstrate her industriousness and her propensity for hard work. It is submitted that there is ample scope and vast employment opportunity for the stream of education that was being pursued by the deceased. This Court is of the opinion that the deceased would have secured a job immediately on the completion of her education in view of the course being pursued by her. Further Ex. P-33 is the salary certificate of a person who had completed the course which reveals that she was being paid a salary of Rs. 73,596/- working as a technical head in a private company. This Court is of the opinion that Ex. P-33 may have an indicative value of the salary that would have been available for the deceased but it is not conclusive proof of the earning capacity or the income that the deceased would have earned, which depends on various imponderables.

19. In that view of the matter, this Court is of the considered opinion, that the tribunal has not erred in fixing the income @ Rs. 18,000/-, but has erred with regard to the multiplier adopted which is contrary to the law laid down by the Hon"ble Apex Court. This Court is of the view that the deceased would have earned a minimum of Rs. 18,000/- as starting salary, if she had successfully completed her course. There can be many a slip between the cup and lip, ifs and buts do not form conclusive proof and hence this Court accepts the notional income at Rs. 18,000/- for the purpose of ascertaining the compensation. There being only two claimants and the deceased being an unmarried person 50% of the notional income is deducted towards personal expenses. Accordingly, the compensation on account of loss of dependency worked out is as follows;

Rs. 9,000/- x 12 x 18 = 19,44,000/-

Hence, the award amount is accordingly modified and the compensation awarded is reduced under the head loss of dependency and is calculated at Rs. 19,44,000/-.

We find that the amounts awarded under other head loss of love and affection and also other conventional heads are also meager. The amount awarded under the head loss of love and affection is enhanced to Rs. 50,000/-.

The award amount under the head of conveyance charges and vehicle expenses is awarded @ Rs. 25,000/-. The award in respect of the medical expenses is

remains unchanged. The sum of Rs. 7,63,104/- awarded under the head of medical expenses is confirmed.

Accordingly, the sum of Rs. 34-lakhs awarded as compensation is modified and a sum of Rs. 27,82,104/- is awarded as just and fair compensation. Accordingly, the appeal is partly allowed modifying the judgment and award of the tribunal.