
(2003) 07 KAR CK 0102

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 2456 and 2457 of 1995

Harkhubai and Others

APPELLANT

Vs

Jiyaram and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 149 (2)
Penal Code, 1860 (IPC) — Section 304 A, 337, 379

Citation : (2003) 4 KCCR 2579

Hon'ble Judges : Tirath S. Thakur, J;Mohan Shanthanagoudar, J

Bench : Division Bench

Advocate : Manikappa Patil, for the Appellant; M. Sowriraju, for Respondent 3 in MFA Nos. 2456 and 2457 of 1995, Ashok R. Kalyanshetty, for Respondent 2 in MFA No. 2457, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J.—These two appeals arise out of an order made by the Motor Accidents Claims Tribunal, Raichur, whereby M.V. Cs. No. 3 and 24 of 1990 filed for payment of compensation by the Appellants have been dismissed.

2. Deceased Vegataram Tulcharam Jatt was a driver by profession. He was on 17.6.1989 driving a lorry on the National Highway-13. When he reached a place near Kushtagi, another lorry coming from the opposite direction had a head-on collision with the lorry being driven by the deceased causing extensive damage to his lorry and severe bodily injuries to the deceased to which he succumbed. M.V.C. No. 3 of 1990 was filed by the owner of the lorry for payment of compensation for the damage caused to his vehicle whereas M.V.C. No. 24 of 1990 was filed by the widow of the deceased Vegataram Tulcharam Jatt, his parents and minor son for payment of compensation. The case of the claimants in both the claim petitions was that the accident in question had taken place due entirely to the rash and negligent driving of the offending lorry bearing registration No. RNS 4311. The claim petitions were opposed only by the

Insurance Company with which the offending vehicle was insured. The driver and the owner of the said vehicle remained exparte. On the pleadings of the parties, the Tribunal framed 6 issues in M.V.C. No. 3 of 1990 and 5 issues in connection M.V.C. No. 24 of 1990. These issues were by a common order dated 7.2.1995 answered in the negative by the Tribunal resulting in the dismissal of the two claim petitions. The Tribunal held that the claimants had not adduced any evidence in support of their claim that the accident had occurred on account of the rash and negligent driving of the offending lorry. In the absence of any such evidence, the question of fastening any liability on the Insurance Company did not according to the Tribunal arise. While dismissing M.V.C. No. 3 of 1990, the Tribunal awarded a sum of Rs. 25,000/- u/s 140 of the Motor Vehicles Act, 1988, with interest at the rate of 6% p.a. in M.V.C. No. 24 of 1990. The present appeals call in question the correctness of the said order.

3. We have heard learned Counsel for the parties and perused the record. In support of their respective claims, the claimants-Appellants in these appeals had adduced oral as also documentary evidence. The oral evidence led in M.V.C. No. 24 of 1990 comprised the deposition of PW-1-Harkhu Bai who happen to be the widow of the deceased driver Vegataram Tulcharam Jatt. PW-2-Sri Dharmchand had been examined only in his capacity as an interpreter engaged to interpret the deposition of PW-1-Harkhu Bai from Marwadi language to English language. In the connected case, PW-1 was the Attorney Holder of the Proprietor of the vehicle driven by the deceased Sri Vegataram Tulcharam Jatt. According to the testimony of these witnesses, the deceased was receiving a salary of Rs. 1,500/- p.m. from the employer. In addition to the oral testimony of the 3 witnesses mentioned above, the claimants had also produced certain documentary evidence interalia comprising a certified copy of the Judgment of the JMFC Court, Kushtagi, in C.C. No. 357 of 1989 by which the driver of the offending vehicle Respondent No. 1 in these appeals was convicted on his pleading guilty before the said Court and sentenced to undergo imprisonment apart from payment of fine. Ex.P-2 is a copy of the FIR lodged by the cleaner of the vehicle driven by the deceased Sri Vegataram Tulchanram Jatt. Ex.P-3 is the Spot Panchanama prepared by the police whereas Ex.P-4 is the report of the Motor Vehicle Inspector who had inspected both the vehicles immediately after the accident and reported that the same did not suffer from any mechanical defect.

4. The oral testimony of the witnesses examined in support of claims does not indeed explain the genesis of the accident obviously because none of the witnesses was an eyewitness to the occurrence. The Tribunal had for want of any ocular evidence regarding the negligence of the offending vehicle's driver declared that the case of the Appellants that the accident had taken place on account of the negligence of the driver of the other vehicle had remained unsubstantiated. While doing so, the Tribunal over looked three important aspects that were relevant in this regard. Firstly, the Court ignored the fact that the owner and the driver of the offending vehicle had both remained exparte. There was consequently no denial of the allegations made in the claim petitions

that the accident in question had taken place on account of the rash and negligence driving of the offending lorry by its driver. The second aspect that the Tribunal failed to take notice was that the Insurance Company was in terms of Section 149(2) not entitled to set up a defence that the accident had not taken place on account of the negligence of the driver of the offending vehicle. Such a defence could and ought to have been raised only by the driver or the owner of the offending vehicle who had as noticed earlier remained *exparte*. The third and indeed the most important aspect which the Tribunal failed to keep in mind was the Judgment delivered by the Magistrate in the criminal case registered against the driver of the offending vehicle. The driver of the offending vehicle, Respondent-1 in these appeals had appeared in the Criminal Court and pleaded guilty to the charges levelled against him. The Magistrate had accordingly recorded a conviction and sentenced the accused to payment of fine for offences punishable under Sections 279 and 337 of the Indian Penal Code. He was also convicted u/s 304(A) of the Indian Penal Code and sentenced to undergo simple imprisonment for a period of seven days. The order passed by the Magistrate had an important bearing on the question which the Tribunal was required to consider. It constituted *prima facie* evidence of the fact that the driver of the offending vehicle was culpably negligent in causing the accident. It is true that the admission made by the driver before the criminal Court leading to his conviction could have been explained by the driver and its effect negated by showing that the admission was for an extraneous motive, but in the absence of any such attempt by the driver, the order of conviction based on a plea of guilt recorded by the Court would *prima facie* show that the accident in question had indeed taken place on account of his negligence. The driver of the offending vehicle had not in the instant case appeared before the Tribunal to explain the circumstances in which he had pleaded guilty before the Criminal Court nor was any attempt made by the owner of the vehicle to show that the plea of guilt recorded by the Magistrate did not conclude a controversy regarding the negligence of the driver. The net effect therefore was that the initial burden of proving that the accident had occurred on account of the negligence of the offending vehicle or its driver stood discharged. We are in that regard supported by a Division Bench decision of this Court in *Vinobabai and Ors. v. Karnataka State Road Transport Corporation and Anr.* ILR 1979 Kar. 979. We have therefore, no difficulty in reversing the finding recorded by the Tribunal and holding that the accident had taken place only because of the negligent and rash driving of the driver of the offending vehicle.

5. The only other aspect that we are required to examine is the quantum of compensation to be awarded in either case. In so far as the claim made by the legal heirs of the deceased driver is concerned, we find that there is sufficient evidence to show that the deceased was receiving a salary of Rs. 1,500/- p.m. or Rs. 18,000/- p.a. The deposition of the attorney holder of the employer of the deceased in that connection has not been seriously challenged in cross-examination. Deducting 1/3rd of the said amount towards the personal expenses

of the deceased, the yearly contribution towards the family would come to Rs. 12,000/- only. That amount has to be capitalised by applying an appropriate multiple which will in turn depend upon the age of the deceased. There is some controversy regarding the true age of the deceased on the date of the accident. In the claim petition, the age of the deceased is shown to be 28 years whereas the Post Mortem report suggests that his age was around 40 years. Neither of the two is however supported by any independent corroborative evidence. We are therefore inclined to take a middle course and hold that the age of the deceased on the date of the accident was around 34 years. If that be so, the appropriate multiple applicable for capitalisation of the annual loss of dependency would be 15 having regard to the decisions of this Court in Gulam Khader and Another Vs. United India Insurance Company Limited and Another, and V.S. Gowdar Vs. The Oriental Insurance Company Limited and Another, . The amount of compensation payable on account of the loss of dependency to the claimants in M.V.C. No. 24 of 1989 therefore comes to Rs. 1,80,000/-. To that amount is added a sum of Rs. 10,000/- towards loss of consortium to the widow, a sum of Rs. 5,000/- towards loss of estate and a sum of Rs. 5,000/- towards transportation of the dead body and funeral expenses taking the total amount of compensation to Rs. 2 lakhs. The said amount will earn interest at the rate of 8% p.a. from the date of claim petition till deposit less the amount already received on no fault basis.

6. That leaves us with the claim in M.V.C. No. 3 of 1990. The Tribunal has rejected the said claim on two grounds. Firstly, because no negligence on the part of the offending vehicle is proved and secondly because the claimant-owner of the vehicle has already received from the Insurance Company with which the vehicle was insured an amount representing the loss suffered by him. While the finding on the first of the said questions has been reversed by us, we see no reason to interfere with the view taken by the Tribunal on the second question. It is not in dispute that the vehicle owned by the claimant in M.V.C. No. 3 of 1990 had suffered extensive damage on account of the collision but it is also admitted that the vehicle being insured with one of the other Insurance Company, the damage was assessed and paid. The order passed by the Tribunal further shows that the payment was received by the claimant in full and final settlement of his claim without any reservation or demur. In the absence of any material to show that the claim paid by the other Insurance Company represented a part only of the total damage, the Tribunal was justified in rejecting the claim for any further payment. We therefore see no merit in the appeal filed by the owner which shall have to be dismissed.

7. In the result, M.F.A. No. 2457 of 1995 is allowed, the order passed by the Motor Accidents Claims Tribunal set aside and M.V.C. No. 24 of 1990 allowed in part. The claimants are held entitled to recover a sum of Rs. 2 lakhs with interest at the rate of 8% p.a. from the third Respondent-Insurance Company. Upon deposit of the amount awarded in terms of this Judgment, the Tribunal shall invest in a schedule bank a sum of Rs. 1,25,000/- each in favour of Smt. Harkhu

Bai and Mr. Bhalaram, widow and son of the deceased. The deposit shall be for a period of 5 years with liberty to the said claimants to withdraw the interest accruing on the deposit every six months. Since Appellant No. 2 is a minor, the deposit in his name shall be under the guardianship of his mother.

8. We further direct that a sum of Rs. 25,000/- only shall be released in favour of Appellant No. 3 and a sum of Rs. 75,000/- in favour of Appellant No. 4. The remainder of the amount shall be released in favour of Appellant No. 1-widow. No costs.

M.F.A. No. 2456 of 1997 is dismissed but in the circumstances without any orders as to costs.