(2015) 03 KAR CK 0314

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 985, 9130, 9091, 9129 and 9092/2010(MV)

Janardhana Achar and Others APPELLANT

Vs

Jagannatha Poojary and Others RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 163-A, 166

Citation : (2015) 03 KAR CK 0314

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

Bench : Single Bench

Advocate : Mahesh Kiran Shetty, for the Appellant

Final Decision : Partly Allowed

Judgement

A.V. Chandrashekara, J.

1. MFA 985/2010 and MFA 9092/2008 have arisen out of MVC 1504/2001 and MFA 9130/2008 has arisen out of MVC 1146/2001. MFA 9129/2008 and MFA 9091/08 have arisen out of MVC 1145/2001 which was pending on the file of Court of Civil Judge (Sr.Dn.) and MACT, Kundapura.

2. The facts leading to filing of these three claim petitions are as follows:

"One Umesh Acharya was proceeding from Manur towards Udupi along with his friend Gangadhara Acharya as pillion rider on motorcycle bearing KA-20-K-1046. The said motorcycle bearing No. KA-20-K-1046 belonged to one Ganesh Acharya. When the said motorcycle reached near Mahalmgeshwara Temple, Manur on NH-17, a passenger bus bearing registration No. KA-19-B-900 being driven in a rash and negligent manner by its driver dashed against the motorcycle. As a result of the same, both the claimants sustained grievous injuries and succumbed to injuries on the spot. The motorcycle was also extensively damaged."

3. Parents of Umesh Acharya, rider of the motorcycle chose to file the claim petition in MVC 1145/2001 under Section 166 of MV Act. Parents, brothers and sisters of Gangadhara Acharya, pillion rider of the motorcycle chose to file claim petition in MVC 1504/2001 under section 163-A of MV Act. Sri. Ganesh, registered owner of motorcycle chose to file claim petition in MVC 1146/2001 claiming damages caused to the motorcycle.

4. According to the claimants, the accident took place at about 12.15 p.m. on 16.4.2001. According to them, the alleged accident took place solely due to negligent driving of the bus by its driver.

5. Motorcycle in question had been insured with M/s. New India Assurance and the insurance policy was valid as on the date of accident. Similarly offending bus in question had been insured with Oriental Insurance Company and it was also valid as on the date of accident. The owner of the bus did not appear before the Tribunal. The insurer namely Oriental Insurance Company and New India Assurance chose to file objections denying all the material averments and they had called upon the claimants to strictly prove the contents of the claim petition.

6. The insurer namely, M/s. Oriental Insurance Company Limited and M/s. New India Assurance Limited chose to file objections denying all material averments and they have called upon the claimants to strictly prove the contents of the claim petition. According to the insurer-M/s. New India Assurance Company Limited, the accident in question had occurred solely due to the rash and negligent driving of the bus driver. A case had been registered against the driver of the bus and after concluding investigation, charge sheet was filed against him.

7. M/s. Oriental Insurance Company Limited had contested the claim petition by filing detailed objections calling upon the claimants to prove the manner in which the accident took place, dependency, etc. According to the company, the accident took place solely due to the negligence of the rider of the motorcycle and therefore it was not liable to indemnify the claimants.

8. On the basis of the above pleadings, the following issues came to be framed separately in each case as found in pages 19 to 23 of the impugned judgment:

"ISSUES IN MVC NO. 1145/2001

1. Whether the petitioners prove that deceased Umesha Acharya had met with an accident on 16.04.2001 at about 12.15 pm, near Mahalingeshwara Temple, Manur on N.H.17, while he was riding the Motor Cycle bearing Reg No. KA-20-K-1046 from Manur towards Kota side?

2. Whether the petitioners prove that the said accident occurred solely due to the rash and negligence on the part of the driver of Bus Bearing Reg No. KA-19-B-900 and the deceased had sustained fatal injuries on his person and died in the spot?

3. Whether there exists contributory negligence as alleged? If so, to what extent?

4. Whether the petition is bad for non-joinder of necessary parties?

5. Whether the petitioners are entitled for compensation? If so, to what extent and from whom?

6. What Order or award?

Additional Issues framed on 08-02-2007

1. Whether the respondent No. 4 proves that the rider of the Motor Cycle bearing Reg No. KA-20-K-1046 was not having valid and effective driving licence as on the date of accident and therefore, he is not liable to pay compensation?

2. Whether the respondent No. 2 proves that the accident occurred solely due to rash and negligent act on the part of the rider of the Motor cycle and therefore, he is not liable to pay compensation and New India Insurance Company is liable to pay compensation?

Additional Issues framed on 06-06-2008

3. Whether the respondent No. 2 proves that the rider of the Motor Cycle did not have a valid and effective driving licence to ride the same at the time of accident?

4. Whether the respondent No. 2 proves that the Insured of the Bus knowingly entrusted the vehicle to a driver who did not have a valid and effective driving licence to drive the same at the time of accident?

ISSUES IN MVC NO. 1146/2001

1. Whether the petitioner proves that the Motor Cycle bearing Reg No. KA-20-K-1046 had met with an accident on 16.04.2001 at about 12.15 pm, near Mahalingeshwara Temple, Manur on N.H.17, while the same was riding by one Umesha Acharya, from Manur towards Kota?

2. Whether the petitioner proves that the said accident occurred solely due to the rash and negligence on the part of the driver of Bus bearing Regn. No-KA-19-B-900 and the Motor Cycle KA-20-K-1046 was badly damaged due to the said impact?

3. Whether there exists contributory negligence as alleged? If so, to what extent?

4. Whether the 2nd respondent is not at all liable for any compensation for the reasons stated in para 5 of the written statement?

5. Whether the 2nd respondent proves that the rider of the Motor Cycle was not holding valid and effective driving licence to drive the same as on the date of accident?

6. Whether the petitioner proves that he had incurred an amount towards repair of the damaged vehicle and as such he is entitled for compensation as prayed for? If so to what extent?

7. What Order or award?

Additional Issues framed on 08-02-2007

1. Whether the respondent No. 3 proves that the rider of the Motor Cycle bearing Reg. No. KA-20-K-1046 was not having valid and effective driving licence as on the date of accident and therefore, he is not liable to pay compensation?

2. Whether the respondent No. 2 proves that the accident occurred solely due to rash and negligent act on the part of the rider of the Motor Cycle and therefore, he is not liable to pay compensation and New India Insurance Company is liable to pay compensation?

ISSUES IN MVC NO.1501/2001

1. Whether the petitioners prove that the deceased Gangadhara Achar had met with an accident on 16.04.2001 at about 12-15 hours, near Mahaligeshwara Temple, Manur on N.H.17, while he was proceeding on a Motor Cycle bearing Reg. No. KA-10-K-1046 as pillion rider from Kundapura towards Kota?

2. Whether the petitioners prove that the said accident occurred due to rash and negligent act on the part of the driver of the Bus bearing Reg. No. KA-19-B-900, and the deceased sustained fatal injuries on his person and died in the spot of accident?

3. Whether there exists contributory negligence as alleged? If so, to what extent?

4. Whether the petitioners are entitled for compensation? If so, to what extent and from whom?

5. What Order or award?

Additional Issues framed on 08-02-2007

1. Whether the respondent No. 5 proves that the rider of the Motor Cycle bearing Reg. No. KA-20-K-1046 was not having valid and effective driving licence as on the date of accident and therefore, he is not liable to pay compensation?

2. Whether the respondent No. 2 proves that the accident occurred solely due to rash and negligent act on the part of the rider of the Motor Cycle and therefore, he is not liable to pay compensation and New India Insurance Company is liable to pay compensation?

Additional Issues framed on 06-06-2008

3. Whether the respondent No. 2 proves that the rider of the Motor Bike did not have a valid and effective driving licence to ride the same at the time of accident?

4. Whether the respondent No. 2 proves that the insured of the Bus knowingly entrusted the vehicle to a driver, who did not have a valid and effective driving licence to drive the same at the time of accident?"

Ganesh Acharya and H. Chandrashekar Shetty have been examined as PW1 and PW2 in MVC Nos. 1145/01 and 1146/01. Janardhana Acharya has been examined as PW1 in MVC.1504/01. Twelve exhibits have been got marked by Ganesh Acharya and 6 documents by Janardhana Acharya. On behalf of the respondents, Jagannatha Poojary, driver of the bus has been examined as RW1. Madhusoodhan Bhat, a representative of M/s. New India Assurance Company is examined as RW2..

9. Initially the claim petition in MVC.1145/01 was filed under Section 166 of the Motor Vehicles Act and later on got converted into one under Section 163A of the Act, and was again got converted into one under Section 166 of the Act. So far as the claim petition in MVC.1504/01 is concerned, it was filed under Section 166 of the Act and later on got converted into one under Section 163A of the Act. MVC.1146/01 it was filed under Section 166 of the Act and continued to be so till it was disposed of.

10. After assessing the oral and documentary evidence, the learned judge of the Tribunal has come to the conclusion that the accident occurred solely due to the negligence of the rider of the motorcycle and has exonerated M/s. New India Company Limited, insurer of the bus in question, from liability. A sum of Rs. 50,000/- is awarded in MVC.1145/01, Rs. 1,77,300/- is awarded as compensation in MVC.1504/01 and MVC.1146/01 has been dismissed after contest.

11. Perused the records and heard learned counsel for the parties.

12. Mr. A.N. Krishnaswamy representing M/s. Oriental Insurance Company has argued that the evidence of the driver of the bus is decisive and there is nothing on record to disbelieve his oral and documentary evidence. It is argued that the evidence of RW1 coupled with the contents of Ex. P2-spot mahazar would make out a clear case of entire negligence on the part of the rider of the motorcycle.

13. Per contra, learned counsel appearing for the claimants, Mr. Pavanchandra Shetty, Mr. Seetharama Rao and Mr. Mahesh Kiran Shetty have argued that the evidence will have to be assessed on the basis of broad preponderance of probabilities and that the driver himself was solely responsible for the accident. According to them, police chose to conduct transparent investigation and have filed charge sheet against the driver of the bus and this material aspect has been ignored by the Tribunal.

14. Learned counsel, Mr. Seetharama Rao has supported the case of the claimants insofar as it relates to the cause for the accident.

15. The evidence in regard to the cause for the accident will have to be assessed on the basis of broad preponderance of probabilities. Of course, PW1 and PW2, Ganesh Acharya and Chandrashekar Shetty are not eyewitnesses. The driver of the bus was accused in the criminal case filed against him. Of course he has been acquitted in the said case. His evidence in the said case will have to be

viewed in the light of the contents of Ex. P2. Admittedly the accident took place at 12.15 p.m. on 16.4.2001 in Manur village. Soon after registering the case, police went to the spot and drew mahazar between 5.00 and 6.00 p.m. o the same day in the presence of Panchas.

16. The place of accident is explained in Ex. P2-mahazar. It was a tar road leading from Kundapur to Udupi. It is mentioned that the place of the accident was on the eastern edge of the tar road leading from Kundapur. The position of the two vehicles as noticed by the investigating officer is mentioned in Ex. P2-spot mahazar. The motorcycle had been extensively damaged and it has been reflected in Ex. P2. The bus was facing the southern side, i.e. towards Udupi. It is also mentioned that the bus had stood on the extreme left side of the mud road after dashing against the stone slabs fixed to the drainage. This would indicate that the bus had come to the extreme left side of the road leading from Kundapur to Udupi.

17. What is argued by the learned counsel for the insurer, Mr. A.N. Krishnaswamy representing M/s. Oriental Insurance Company is that the driver of the bus did not and could not see the motorcycle coming from the left side and hit against the hind wheel of the bus and therefore the accident took place solely due to the negligence of the rider of the motorcycle. This court is unable to accept the said contention for the simple reason that DW1 has deposed as follows:

"The accident occurred the motorcycle and the bus. I was driving the bus on the left side of the road. The accident occurred near Mahalingeshwar Kalyan Mantap at Manur village. The tar road is 12'' in width and mud road is 8'' on the other side of the road. I did not see the motorcycle earlier to the accident. The motorcycle came from the mud road leading to the Kalyan Mantap and dashed against the backside wheel and went beneath the back wheel. The left back wheel of the bus was at a distance of 2'' from the left road edge, i.e. eastern edge."

18. If this portion of his evidence is perused, one cannot come to the conclusion that he had not seen the motorcycle on the main road from Kundapur to Udupi on that particular place. It also goes to show that he did not exercise the requisite diligence to avoid the accident. If the vehicle in question had not been driven in high speed, the accident would not have taken place in the manner in which it occurred.

19. As already observed, the evidence of DW1 will have to be read in the light of the charge sheet filed against him. His acquittal by the jurisdictional magistrate court will not help since the prosecution is expected to prove the guilt of the accused beyond reasonable doubt.

20. Insofar as assessing the cause for the accident in cases like this, the same will have to be on the basis of broad preponderance of probabilities. The said investigation has been done by a responsible police official while discharging his official duties. There is nothing on record to doubt the genuineness of the

investigation done by the police. It is not the case of the driver that the vehicle came from the opposite side or from the western edge and dashed against the bus. Admittedly the motorcycle was also on the left side of the road when the accident took place. The position of the bus noticed by the police at the time of writing spot mahazar would indicate the speed with which the bus was moving. If it had been driven in the normal speed, there was no occasion for the driver of the bus to have gone to the extreme left and dashed to the stones fixed to the culvert which is o the further eastern side of the mud road, width of which was 8''. Taking into consideration the totality of the case, it has to be held that the accident took place solely due to the negligence of the driver of the bus who is examined as DW1.

21.The learned judge has not assessed the evidence on the basis of broad preponderance of probabilities and has virtually believed the version of DW1 to hold that the accident took place solely due to the negligence of the rider of the motorcycle. The learned judge has not adopted right approach, more particularly keeping in mind the investigation conducted by responsible police officers. It is also to be seen that Ex. P2-spot mahazar was written within a few hours of the accident and it reflected the realities that existed at the spot.

22. While acquitting the accused/driver, the learned judge of the criminal case in C.C.341/01 has made an extensive discussion about the damage to the bus. The same is found in paragraph 12 of Ex. D2, certified copy of the judgment of acquittal. It discloses that the bus had been damaged extensively. The front axle land wheel land engine chamber had been damaged.

23. If really the motorcycle had hit the hind wheel of the bus, there would not have been any damage to the front portion of the bus. This clearly indicates that the bus had hit the motorcycle and thereby caused extensive damage to the motorcycle as also injuries to the rider and pillion rider.

24. On going through the entire oral and documentary evidence and looking to the totality of the case, it is certain that the accident took place solely due to the negligence of the driver of the bus, and therefore the insurer of the said vehicle, i.e. M/s. Oriental Insurance Company is liable to indemnify the claimants.

25. Insofar as MVC.1145/01 (appellants in MFA.9129/08 is concerned, deceased Umesh Acharya was aged 24 years and was working as a carpenter. The petition was filed under Section 166, M.V. Act and later on converted to one under Section 163A of the Act, and again to Section 166 of the Act. The Tribunal has awarded only Rs. 50,000/- under the concept ''no-fault liability.'' But since the petition is one under Section 166 of the Act, income will have to be reasonably assessed. The deceased was aged 24 years and hale and healthy. Even if his income is assessed on the basis of broad preponderance of probabilities at Rs. 3,000/- p.m., 50% will have to be deducted towards personal expenses and thus loss of income would be Rs. 1,500/- p.m. and Rs. 18,000/-annually. The mother''s age is 46 years and father''s age is 50 years. Therefore the relevant

age would be that of the mother for which the appropriate multiplier is 13 as per the principles enunciated in the case of SARLA VERMA v. DELHI TRANSPORT CORPORATION and OTHERS If Rs. 18,000/- is multiplied by 18, the total loss of dependency would come to Rs. 2,34,000/-. To this Rs. 30,000/- will have to be added as future prospects which comes to Rs. 3,04,200/-. It is rounded off to Rs. 3,04,000/-.

26. A sum of Rs. 20,000/- each will have to be awarded under the head loss of love and affection and loss to estate and Rs. 10,000/- towards funeral expenses and transportation of dead body. Thus the claimants in MVC.1145/01 is entitled to a total compensation as follows:

Thus the claimants are entitled to enhanced compensation of Rs. 3,54,000/- as against Rs. 50,000/- awarded by the Tribunal. This would be the just and proper compensation under Section 166 of the Motor Vehicles Act. The enhanced amount of Rs. 3,04,000/- (rupees three lakhs four thousand only) shall; carry interest at the rate of 6% p.a. from the date of petition till realization. In the event of deposit, 40% shall released in favour of the 1st appellant-Madhava Acharya and the remaining 60% shall be kept in fixed deposit in any nationalized bank in the name of the 2nd appellant-Janaki for a period of 5 years with liberty to draw accrued interest periodically from time to time.

27. Insofar as the claimant in MVC. 1146/01 (appellant in MFA.9130/08), Ganesh Acharya is concerned, extensive damage had been caused to the vehicle in question reimbursed. The learned judge has refused to grant any damage mainly on the ground that the same has not been proved in accordance with law. Exs. P8 to P11 are photographs depicting the damage to the vehicle and Ex. P12 is the negative. Ex. P2-mahazar discloses extensive damage to the vehicle, and therefore a reasonable amount could have been granted as compensation. Chandrashekar Shetty, loss assessor has been examined as PW2. He has assessed loss to the extent of Rs. 32,128/-. By looking to Exs. P8 to P11, it is evident that the said vehicle has virtually become useless.

28. On the basis of broad preponderance of probabilities, awarding a sum of Rs. 10,000/- towards damages to the vehicle in question would meet the ends of justice. The said amount shall carry interest at the rate of 6% p.a. from the date of petition till realization.

29. Insofar as the claimants in MVC.1504/01 (appellants in MFA.985/10) are concerned, the petition is filed under Section 163A of the M.V. Act. The Tribunal has awarded in all Rs. 1,77,300/-. The deceased-Gangadhara Achar was aged 25 years and was hale and healthy. He was a goldsmith. Of course no documentary evidence is placed on record to prove his avocation. Therefore on the basis of broad preponderance of probabilities, his income will have to be assessed. Ex. P6 is the SSLC marks card of the deceased in which he has scored I Class. Taking into consideration his age, health and educational qualification, it would be reasonable to assess his annual income at Rs. 40,000/-. Thus as per Schedule II

to the M.V. Act, the maximum amount that can be awarded in the case of death of a person aged between 20 and 25 years is Rs. 7,20,000/-. Out of this, 1/3rd has to be deducted towards personal expenses which comes to Rs. 4,80,000/-. Hence Rs. 4,80,000/- is assessed as loss of dependency.

30. Apart from this, a sum of Rs. 2,000/- towards funeral expenses and Rs. 2,500/- towards loss to estate will have to be added. Thus the claimants in MVC.1504/01 are entitled to enhanced compensation of Rs. 4,84,500/- as against Rs. 1,77,300/- granted by the Tribunal. The enhanced compensation of Rs. 3,06,700/- (rupees three lakhs six thousand seven hundred only) shall carry interest at the rate of 6% p.a. from the date of petition till realization. The award amount shall be equally apportioned between the claimants, Janardhana and Mookambika. In the event of deposit, 50% of the share of Janardhana Achar shall be released and the remaining 50% shall be kept in fixed deposit in any nationalized bank of his choice for a period of 5 years with liberty to draw accrued interest from time to time. The entire amount apportioned to the 2nd appellant-Mookambika shall be kept in fixed deposit in any nationalized bank of her choice for a period of 5 years with liberty to draw accrued interest from time to time.

31. In the result, the following order is passed:

"I) M.F.A.9091/08 and M.F.A.9092/08 filed by M/s. New India Assurance Company Limited are allowed and the insurance company is exempted from indemnifying the claimants.

The amount deposited by the insurance company shall be returned to it.

II) M.F.A.985/10 is allowed in part. The claimants in MVC.1504/01 are entitled to enhanced compensation of Rs. 4,84,500/- as against Rs. 1,77,300/- granted by the Tribunal. The enhanced compensation of Rs. 3,06,700/- (rupees three lakhs six thousand seven hundred only) shall carry interest at the rate of 6% p.a. from the date of petition till realization. In the event of deposit, 40% is apportioned in favour of Janardhana Achar and 60% is apportioned in favour of 2nd appellant-Mookambika Achar. The entire amount of 60% apportioned to the 2nd appellant-Mookambika shall be kept in fixed deposit in any nationalized bank of her choice for a period of 5(Five) years with liberty for her to draw accrued interest from time to time.

III) M.F.A.9129/08 is allowed in part. The claimants in MVC.1145/01 are entitled to enhanced compensation of Rs. 3,54,000/- as against Rs. 50,000/- awarded by the Tribunal. This would be the just and proper compensation under Section 166 of the Motor Vehicles Act. The enhanced amount of Rs. 3,04,000/- (rupees three lakhs four thousand only) shall; carry interest at the rate of 6% p.a. from the date of petition till realization. In the event of deposit, 40% is apportioned in favour shall released in favour of the 1st appellant-Madhava Acharya and the same be released in his favour remaining 60% shall be kept in fixed deposit in any nationalized bank in the name of the 2nd appellant-Janaki for a period of 5 years with liberty to draw accrued interest periodically from time to time.

IV) M.F.A.9130/08 filed by the claimant is partly allowed. The claimant in MVC.1146/01-Ganesh Acharya is entitled to Rs. 10,000/- (ten thousand only) towards the damage caused to the vehicle in question. The said amount shall carry interest at the rate of 6% p.a. from the date of petition till realization. The entire amount be released in favour of Ganesh Acharya.

V) The entire liability to indemnify the claimants as noted above is mulcted on M/s. Oriental Insurance Company Limited. The insurance company is granted 12 weeks time to pay the amount awarded."