
(2005) 10 KAR CK 0015
In the Karnataka High Court

Kanakanagouda and Others

APPELLANT

Vs

Devaraddi and Another

RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2007) 2 ACC 615

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Judgement

K. Sreedhar Rao, J.—M.F.A. No. 7501/2002 arises out of M.V.C. No. 237/1995. M.F.A. No. 7520/2002 arises out of M.V.C. No. 617/1995. The insurer has filed the appeals in M.F.A. Nos. 7768-70/2002 in respect of M.V.C. Nos. 237/1995, 238/1995 and 617/1995. The Tribunal has disposed of all the cases by a common judgment.

2. M.V.C. No. 238/1995 pertains to the death of one Hanamappa. M.V.C. No. 237/195 pertains to the death of one Smt. Gitanjali. M.V.C. No. 617/1995 pertains to the personal injuries caused to the petitioner.

3. The narration of material facts in the judgment discloses that deceased Hanamappa was travelling as a loader in the lorry. The deceased Geetanjali and petitioner in M.V.C. No. 617/1995 were passengers in the lorry.

4. Owner of the lorry had filed objections contending that the deceased and injured were unauthorised passengers in the lorry. Thus, the Tribunal comes to the conclusion that two of the deceased and injured in the lorry are passengers. In view of the ruling of the Supreme Court in New India Assurance Company Vs. Shri Satpal Singh and Others, , the Tribunal directed the insurer to pay compensation to the petitioners subject to the decision to be rendered by a Larger Bench in New India Assurance Company Vs. Shri Satpal Singh and Others, is now decided holding that carrying of passenger in goods vehicle is prohibited in law and the insurer does not incur any liability to the death or bodily injury

caused to the passengers in the goods vehicle. In that view, the insurer does not incur liability to pay compensation under award made in M.V.C. No. 237/1995 and 617/1995. Therefore, related appeals M.F.A. Nos. 7768/2002 and 7770/2002 filed by the insurer challenging the liability in the said cases are to be allowed. Accordingly they are allowed. The amount deposited by the insurer-appellant in M.F.A. Nos. 7768 and 70/2002 shall be refunded to the appellant.

5. In M.V.C. No. 238/1995 it is stated that the deceased was travelling as a loader. The petitioner has let in oral evidence. The owner has filed written statement denying employment of Hanamappa as a loader in the lorry. On the basis of the averments made in the written statement, the Tribunal comes to the conclusion that the deceased was not a loader and was a passenger in the lorry. The view taken by the Tribunal is untenable. Allegations in the written statement do not constitute evidence. The owner has not stepped into the witness-box to substantiate his allegations in the written statement. There is no contra evidence to rebut the pleadings and oral evidence let in by the petitioner in proof of the fact that the deceased Hanamappa was a loader in the lorry. In that view, the insurer incurs statutory liability to pay compensation to the loader in the lorry u/s 147 of the Motor Vehicles Act. Therefore, the insurer is liable to pay the compensation to the petitioner. Hence, the appeal filed by the Insurer in M.F.A. No. 7769/2002 is dismissed. The amount in deposit in M.F.A. No. 7769/2002 to be transmitted to the Tribunal for payment.

6. Petitioners in M.V.C. No. 237/1995 have filed an appeal seeking enhancement. The deceased Geetanjali is a housewife. Her income to be assessed at Rs. 1,500 per month. As per unit system income to be divided into four parts. Rs. 375 to be deducted towards personal expenses of deceased. The total loss of dependency would be Rs. 1,89,000 (Rs. 1,125 x 12 x 14). Husband is entitled to Rs. 10,000 for loss of consortium. All the petitioners are entitled to Rs. 10,000 for loss of expectancy and Rs. 3,000 for funeral expenses. In all, petitioner is entitled to Rs. 2,12,000 with interest at 6% p.a. from the date of petition till the date of payment as against Rs. 1,58,500 awarded by the Tribunal. The compensation shall be payable by the owner. Claim against the insurer is dismissed. M.F.A. No. 7501/ 2002 is allowed accordingly.

7. Petitioner in M.V.C No. 617/1995 has sustained fracture of both pelvic bones and disassociation of right sacroiliac joint. The total body disability is assessed at 15%. The total limb disability to be assessed at 30% Petitioner is a lecturer getting a salary of Rs. 6,000 per month.

8. On re-examination of the facts and evidence, petitioner is entitled to Rs. 40,000 towards pain and agony. Rs. 10,000 towards medical expenses, Rs. 30,000 towards loss of amenities and discomfort on account of the disability. The disability does not affect the employment and income of the petitioner. Hence, no amount need be payable towards loss of future earnings. Rs. 18,000 are awarded towards loss of leave during the period of treatment. In all, petitioner is entitled to Rs. 98,000 with interest at 6% p.a. from the date of petition till date of

payment as against Rs. 1,10,000/- awarded by the Tribunal. As the compensation awarded by the Tribunal is on the higher side, no enhancement is called for. Accordingly, appeal M.F.A. No. 7520/2005 is dismissed.