

(1981) 12 KAR CK 0012

In the Karnataka High Court

Case No : Miscellaneous First Appeal No's. 677 of 1980 and 101 of 1981

K.G. Prabhavathi and Others

APPELLANT

Vs

K. Nirmala and Others
 K. Prabhakara Reddy Vs K.G.
Prabhavathi and Others

RESPONDENT

Date of Decision : 17-12-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 110 B

Citation : (1984) 55 CompCas 670

Hon'ble Judges : G.N. Sabhahit, J;A.K. Laxmeshwar, J

Bench : Division Bench

Advocate : S.G. Sundaraswamy and C.V. Nagesh, for the Appellant;

Judgement

Sabhahit, J.—These two appeals arise out of the judgment and awards dated December 26, 1979, passed by the Motor Accidents Claims Tribunal, Bangalore City, in M.V.C. Nos. 317 and 363 of 1978, on its file.

2. Govindaraj, the husband of petitioner No. 1, and father of petitioners Nos. 2 to 4, in M.V.C. No. 317/1978, was proceeding on his scooter, on April 10, 1978, at about 9 a.m., on K. R. Road, from South towards North according to the claimants, slowly and by the left side of the road. At that time, a motor cycle bearing No. MYK 1845, driven by Prabhakara Reddy claimant in M.V.C. No. 363/1978, from the opposite direction, in a rash and negligent manner, came on the wrong side, according to the claimants, hit the scooter on which Govindaraj was going, as a result of which there was an accident. Govindaraj sustained fatal injuries and succumbed to the injuries later. He was a businessman earning more than Rs. 1,500 per month. He was aged 39 years. On those averments, they claimed a compensation of Rs. 3,34,500 from the respondents, namely, the owner, the driver and the insurer of the motor cycle, in question.

3. On the other hand, Prabhakara Reddy, who also sustained fracture of his leg, averred in the petition that the accident was the result of negligent driving of the scooter by Govindaraj, the deceased, and he instituted M.V.C. No. 363/1978, and

claimed compensation of Rs. 86,000 from the respondents, namely, the legal heirs of Govindaraj and the insurance company.

4. Both these claim petitions were heard together and during the hearing, on behalf of the claimants in M.V.C. No. 317/1978, five witnesses were examined and two witnesses were examined on behalf of Prabhakara Reddy, the claimant, in M.V.C. No. 363/1978, including himself.

5. The Tribunal, after appreciating the evidence on record, held that the accident happened in the middle of the road and both the riders of the scooter and the motor-cycle were equally responsible for causing the accident. In that view, instead of mitigating the damages to that extent in each case, the Tribunal dismissed both the petitions, stating that the drivers were quits since both of them were equally liable in causing the accident. Aggrieved by the said judgment and awards, the legal heirs of Govindaraj, i.e. the claimants in M.V.C. No. 317/1978, have instituted M.F.A. No. 677/1980, whereas, Prabhakara Reddy who was claimant in M.V.C. No. 363/1978, has come up in M.F.A. No. 101/1981, before this court.

6. Sri Sundaraswamy, learned counsel appearing for the appellants in M.F.A. No. 677/1980, strenuously urged before us that the Tribunal was not justified in coming to the conclusion that the rider of the scooter, namely, Govindaraj, contributed 50 per cent. in causing the accident. According to him, it was the motor cyclist who was responsible for causing the accident. Alternatively, he submitted, even assuming that the rider of the scooter contributed 50 per cent., the Tribunal was not justified in dismissing the entire claim of the claimants. At best, according to him, the Tribunal could have deducted 50 per cent. damages as 50 per cent. was contributed to the cause of the accident by the deceased.

7. As against that, the learned counsel, Sri Nagesh, appearing for the appellants in M.F.A. No. 101/1981, submitted, that it was the scooter rider who responsible for causing the accident. Alternatively, he submitted that the Tribunal was not justified in dismissing the entire claim of Prabhakara Reddy, even assuming he contributed 50 per cent. to the cause of the accident.

8. Both the counsel argued that compensation ought to have been awarded.

9. The points, therefore, that arise for our consideration in these appeals, which are heard together, are :

(1) Whether the Tribunal was justified in holding that the riders of the scooter and the motor cycle contributed equally for the cause of the accident ?

(2) Whether the Tribunal was justified in dismissing the claim petitions in both the cases ?

(3) If not, what is the amount of compensation to which the claimants in M.V.C. No. 317/1978 are entitled ?

(4) What is the amount of compensation to which Prabhakara Reddy is entitled ?

10. It is seen that the Tribunal has dismissed M.V.C. No. 363/1978, on the ground of delay in filing the petition. The delay is of 42 days. The ground is that the claimant was undergoing treatment and was in mental anguish. In view of the fact that he suffered fracture of his leg and was actually put in plastercast, the Tribunal ought to have condoned the delay, holding the reason advanced by the claimant as sufficient. The Tribunal was not justified, in our considered view, in rejecting the petition on the ground of delay also. Therefore, we set aside the finding of the Tribunal and hold that the claimant has shown sufficient cause for condonation of delay and we condone the delay.

11. P. Ws. 2 and 3 are examined on behalf of the claimants in M.V.C. No. 317/1978. They are eye witnesses, according to them, to the occurrence. The Tribunal has not believed their version, for the reasons, that they admitted in the cross-examination, that they never reported that they had seen the accident to anybody else, before deposing in court. Further, they never informed the accident even to the members of the family of deceased. He knew the deceased. In the normal course, therefore, it was natural to expect that he would inform at least the members of the family of the deceased. Similarly is the case with P.W. 3. Moreover, when they did not reveal to anybody else that they saw the accident, it was not known how the members of the family of the deceased came to know that they had seen the accident and requested them to depose before the Tribunal. Admittedly, no summons were issued to them from the Tribunal. In the circumstances, therefore, the Tribunal was perfectly justified in not placing reliance on the oral evidence of these witnesses.

12. The Tribunal has also not placed much reliance on the evidence of Prabhakara Reddy for the simple reason that he was interested in absolving himself from the liability. The Tribunal did not rely upon the evidence of R.W. 2, the pillion rider, as obviously, he was also interested in the claimant, Prabhakara Reddy.

13. In the circumstances, the Tribunal has rightly placed reliance on the circumstantial evidence brought on record, in appreciating the version given by the two parties.

14. P.W. 2 is the sub-inspector of police. He has stated that he visited the spot of the accident immediately and noted the place of impact and positions of the vehicles. He has drawn the mahajar, as also the sketch, Exs. P-2 and P-3. They clearly establish that the accident happened exactly in the middle of the road and after such impact, the motor cycle exactly in the middle of the road and after such impact, the motor cycle proceeded to some distance, whereas, the scooter was thrown off toward its left side and fell down. In the circumstances, therefore, the Tribunal has rightly come to the conclusion that the accident was the result of the rash and negligent driving of the both the vehicles by its drivers and the Tribunal has rightly fixed the contribution of negligence at 50 per cent. We have no reason to differ.

15. Having held so, the Tribunal went on to say :

"The present accident has taken place due to the rashness and negligence on the part of both the scooter driver, deceased, Govindaraj, as well as the motor cycle driver, Prabhakara Reddy. Therefore, it is a case of composite negligence. Therefore, petitioners in M.V.C. No. 317/1978, as well as the petitioner in M.V.C. No. 363/1978, are not entitled to get any compensation."

16. This observation, obviously, is erroneous.

17. If each driver contributes 50 per cent. to the cause of the accident, it is obvious that 50 per cent. damages awarded, should be deducted from the total fixed. It cannot be said that he is not entitled to damages at all. That is what the Tribunal has done.

18. In fact, this court, in the case of Mahadev Balappa Babshet Vs. Ramesh Narayan Nagwekar and Others, speaking through a Division Bench, had occasion to consider a similar situation wherein, under similar circumstances, the Tribunal had dismissed the claim petition. This court has ruled thus :

"The Tribunal could only mitigate the liability of the drivers to each other to the extent to fifty per cent. and not deny altogether the claim of the offending drivers who happened to be the claimants also."

19. Similar is the view taken by this court in a Division Bench decision in the case of Vittobai and Others Vs. Raghavan S. and Others, in which it is held :

"As the deceased rider of the Suvega contributed 50 per cent. to the cause of the accident, 50 per cent. of the compensation arrived at should be awarded."

20. Therefore, we set aside the finding of the Tribunal that no compensation should be awarded in the circumstances and hold, that the claimants in each case are entitled to 50 per cent. of the damages fixed.

21. That takes us to the question of quantum of compensation. Govindaraj, the deceased, in M.V.C. No. 317/1978, was a businessman. His Income Tax return for the year 1978-79 is produced at Ex. P-5. That shows that his income was Rs. 15,700, i.e., the income to his share in the business. Therefore, it can safely be concluded that he was earning on an average Rs. 1,000 and a little more p.m. and, hence, we deem it just and proper to fix the loss of dependency at Rs. 600 per month to the members of the family, the claimants in M.V.C. No. 317/78. Therefore, the annual loss of dependency would be Rs. 7,200. Using the multiplier ten, we get the total loss of dependency at Rs. 72,000. To this has to be added Rs. 5,000 towards loss to the estate of the deceased, Rs. 4,000 towards loss of consortium to the widow and Rs. 1,000 towards incidental and funeral expenses. In all, therefore, the global compensation to which the claimants would have been entitled would be Rs. 82,000. In addition, the Tribunal has suggested the damages on account of accident to the scooter at Rs. 1,590 which we round off to Rs. 1,600. Together, therefore, the claimants would

have been entitled to Rs. 83,600. But, in view of the fact, that the rider of the scooter contributed 50 per cent. to the accident, the claimants are entitled to only 50 per cent. of the damages, which amounts to Rs. 41,800, along with interest and costs.

22. The claimant in M.V.C. No. 363/1978 is Prabhakara Reddy. The evidence on record shows that he suffered fractured of the leg. The Tribunal has suggested, for pain and suffering and disability, Rs. 10,000 as general damages. We accept it. The Tribunal has proposed Rs. 1,000 towards nourishing food which also we accept. Together, therefore, he would have been entitled to compensation of Rs. 11,000. But, in view of the fact, that the claimant contributed 50 per cent. to the cause of the accident, he would be now entitled to Rs. 5,500 along with interest and costs.

23. The Tribunal has further held that the insurance company is not liable to pay the compensation in M.V.C. No. 317/1978, because, the insured person of the vehicle, Venkatarama Reddy, the owner of the motor cycle, was no more and, according to the Tribunal, the policy lapsed on the death of the insured. This view of the Tribunal came to be challenged before us. In fact, this court, by a Division Bench decision, in the case of Smt. Rangamma v. Thimmarayappa ILR [1980] 804, had an occasion to consider similar situation and, after reviewing the case-law, this court had held :

"The interest secured under a policy for the user of a motor vehicle in a public place can be deemed to be property and it passes to the legal representatives on the demise of the insured for the rest of period insured."

24. Therefore, even if the insured dies, the policy survives for the benefit of the legal heirs till the period of policy is over. That being so, the Tribunal was not justified in coming to the conclusion that the policy lapsed after the death of the insured. We held that the insurer of the motor cycle would be liable to pay the compensation under s. 110B of the Motor Vehicles Act, 1939.

25. In the result, M.F.A. No. 677/1980 is partly allowed. The judgment and award of the Tribunal are set aside. The claimants are awarded Rs. 41,800 along with interest at 6 per cent. per annum from the date of petition till payment, as also costs of the claimants throughout.

26. The insurer arrayed as respondent No. 3 (K.G.I.D.), shall pay the same along with interest and costs, as stated above, to the claimants.

27. Claimants Nos. 2 to 4 are minors. Claimant No. 5 is the mother, aged 60 years, and claimant No. 1 is the widow. Claimant No. 5, who was aged 60 years, at the time of the accident, is awarded Rs. 5,000 along with interest, as indicated above. Claimants Nos. 2 to 4 are each awarded Rs. 6,000. The insurance department shall deposit Rs. 18,000 along with interest, as indicated above, before the Tribunal and the Tribunal, in turn, shall deposit the same in a scheduled bank, in the name of the three minors till such time as each of them

attains the age of majority, with their mother, claimant No. 1, as guardian. Claimant No. 1 is at liberty to withdraw the interest accruing on the deposits from time to time, and spend the same for the welfare of the minors. The rest of the amount with interest, as also the costs, shall be paid by the K.G.I.D. to the first claimant, the widow of the deceased, as indicated above.

28. M.F.A. No. 101/1981 is partly allowed. The judgment and award of the Tribunal are set aside. The claimants is awarded Rs. 5,500 along with interest at 6 per cent., from the date of petition till payment, as also his cost throughout. Respondent No. 6, the New India Assurance company shall pay the same, along with interest and costs, as indicated above, to the claimant.