

(1994) 07 BOM CK 0004
In the Bombay High Court
Case No : F.A. No. 76 of 1989

Kunjamma Mathai

APPELLANT

Vs

Marcelo Fernandes and Others

RESPONDENT

Date of Decision : 14-07-1994

Acts Referred:

Citation : (1995) 1 ACC 46 : (1996) ACJ 866

Hon'ble Judges : G.D. Kamat, J;A.A. Halbe, J

Bench : Division Bench

Advocate : S.G. Bhobe, for the Appellant; H.R. Bharne and U.S. Kolwalkar, for the Respondent

Judgement

G.D. Kamat, J.—This appeal has arisen out of the award dated 28.2.1989, made in Claim Petition No. 68 of 1986, which was instituted by the present appellant.

2. Appellant instituted the claim petition claiming a large amount of compensation of Rs. 5,00,800/- in respect of the death caused to her son, Regi Mathew, in a vehicular accident on 10.5.1986, at Margao. It was claimed by the appellant that her son Mathew was a site engineer employed with New India Construction Company drawing a salary of Rs. 2,000/-per month. It was her case that at about 9.30 p.m. on 10.5.1986, motor cycle bearing No. BHD 203 was being ridden by respondent No. 3 and her son was a pillion rider and upon reaching Margao-Curtorim Road, while taking a turn to come on a side road leading to Gogol, tempo bearing registration No. GDZ 2650, driven by the respondent No. 1 coming from Curtorim in the direction of Margao, gave a dash as a result of which her son fell down and suffered head injury. He was lodged in Goa Medical College Hospital at Panaji and despite medical assistance he expired on 14.5.1986.

3. The claim was opposed by respondent No. 1 and insurer, respondent No. 2, attributing negligence to the rider of the motor cycle. Insofar as respondent No. 3 is concerned, his case was that at the relevant time of the accident Regi

Mathew was riding the motor cycle and he was a pillion rider. On the basis of the evidence led on both sides, the Tribunal determined compensation at Rs. 1,53,000/- but, however, came to hold that Regi Mathew was also responsible for the accident and apportioned the responsibility of the accident in the ratio of 60 per cent to Regi and 40 per cent to respondent No. 1, driver of the tempo. Upon reaching this conclusion, the Tribunal held that 40 per cent of the compensation out of the amount determined equal to Rs. 61,200/- is liable to be paid to the appellant and accordingly directed so with interest at the rate of 10 per cent per annum from the date of filing of the petition till payment together with costs of Rs. 2,000/-.

4. Some challenges are taken in the memo of appeal, but finally, Mr. S.G. Bhohe, learned Counsel appearing for the appellant, has restricted his attack to two grounds. According to him, the Tribunal was in error in not rendering a conclusive finding that Regi Mathew was a pillion rider on that fateful night when the accident took place and secondly, that regard being had to the evidence the Tribunal was in error in apportioning the responsibility for the accident in the ratio of 6:4. His contention was that the entire responsibility for the accident ought to have been foisted on respondent No. 1, driver.

5. We have gone through the paper-book as also the award rendered by the Tribunal with the assistance of the learned Counsel and it is clear that the deceased Mathew was employed as a site engineer with New India Construction Company. M.H. Khan, AW 4, has testified to this fact and proved a certificate dated 4.6.1985 that Regi Mathew was employed as from 1.5.1985 and getting a monthly salary of Rs. 2,000/-. It has also come in evidence that the appellant is a widow and besides her only son Regi, she has two daughters; that the appellant and her two daughters were mainly dependent on the income of the deceased Mathew.

6. The Tribunal considered the income of deceased Mathew and importing the doctrine of dependency, held that the appellant and two sisters of Mathew would be entitled to a sum of Rs. 1,20,000/- in respect of the financial loss. Dependency was computed at the rate of Rs. 1,000/- per month, the multiplier used was 10. The Tribunal thereafter awarded a sum of Rs. 3,000/- for the transportation of the dead body from Goa to the native place at Kerala for funeral and Rs. 30,000/- for loss of company on the ground that Regi was the only son of the family.

7. In no manner whatsoever we are able to fault with the compensation determined in the present case as it seems to us that the Tribunal was fair in importing the doctrine of dependency and having regard to the circumstances holding Rs. 12,000/- was the annual loss and without further curtailing the sum, applied the fair multiplier of 10 considering the age of the deceased which was 26 at the time of his death. In our view no grievance can survive upon the computation of Rs. 1,20,000 by way of financial loss insofar as the appellant and her two daughters are concerned.

8. There seems to be some justification insofar as the grievance of the learned Counsel for the appellant is concerned, in the matter of apportionment of the responsibility, though from the evidence on record it is difficult to accept that the blame entirely lies on the driver of the pick-up. Further, to appreciate this grievance, it is necessary to see as to what the Tribunal says. In para 8, the Tribunal held:

The evidence on record convinces me that both of them were rash and negligent in the present case. I am stating so on the strength of the statements of Ramrai Naik, AW 5 and Liston Fernandes, RW 2. From what they state, it can be seen that the motor cycle was going from Margao towards Curtorim; that on reaching Gogol, the motor cycle turned to the right to enter a secondary road; at this moment the mini bus driven by the respondent No. 1 came from Curtorim side and dashed against the motor cycle. Being such the case, we have to see that it was the duty of the driver of the motor cycle, who was travelling along the main road and who was going to leave it to enter a secondary road on the right, to make the necessary signal to the vehicles plying along both the ways of the main road that he was turning to the right. There is no evidence at all to show that such signal was made by the driver of the motor cycle. Being so, there is no doubt in my mind that the driver of the motor cycle acted with gross negligence while turning to the right to leave the main road and enter the secondary road that joins the main roads at the said spot.

The Tribunal, thereafter, however held:

However, I cannot agree with the respondent No. 1 that there was no fault of the respondent No. 1 in the present accident. It is the case of the respondent No. 1 that he was driving his mini bus in a moderate speed. This averment is not believable for the reason that if the speed of the vehicle was moderate, the same respondent No. 1 would have no difficulty in stopping his vehicle immediately on seeing the motor cycle turning to the right. A vehicle moving at a speed of 50 kmph or thereabout can be stopped within a short distance if brakes are applied on. In the present case, not only the respondent No. 1 was unable to stop his vehicle but even caused it to leave the road and fall into the drain existing by the side of the road. I have to infer from the facts on record that the respondent No. 1 was plying his vehicle in an excessive speed. Therefore, I hold that the respondent No. 1 also contributed with rashness to the present accident.

9. Mention has been made to the evidence of Ramrai Naik, AW 5 and Liston Fernandes, RW 2, to reach the findings extracted above. A bare look at the evidence of Ramrai Naik, AW 5, shows that he was standing near a gada which is close to the spot of the accident. He saw the bus coming from Curtorim side and the motor cycle coming in the opposite direction. Thereafter, he saw the motor cycle turning towards Gogol and in the meantime, the bus came and dashed the motor cycle. According to him, the bus which dashed the motor cycle came on its extreme left and fell into a ditch and turned turtle. At the end of the examination-in-chief he says that the bus was being driven at a fast speed and it was

descending a slight slope.

Liston Fernandes, RW 2, stated that he was riding his motor cycle and proceeding from Margao towards Curtorim side and when he reached near a culvert at Gogol a motor cycle overtook him with a pillion rider. Before reaching the culvert he saw mini bus coming in the opposite direction proceeding towards Margao. When the motor cycle reached 9 or 10 metres after overtaking him, the rider of the motor cycle who wanted to turn his vehicle to the right to enter another side road, came in collision with the mini bus which was coming in the opposite direction. He went near the spot of the accident and saw that the rider and pillion rider had both sustained injuries.

10. It appears that the Tribunal was impressed that there was no evidence on the side of the claimant, that the rider of the motor cycle had not given a signal that he was turning to the right side on the Gogol road from the main Margao-Curtorim Road. On a correct perspective of the evidence of Ramrai Naik, AW 5 and Listen Fernandes, RW 2, from the fact that the pick-up van dashed the left-hand side of the motor cycle it would suggest that the motor cycle had already diverted itself to come to the Gogol side road and the fact that the pick-up did not stop and, on the contrary, went to the extreme side of the road and fell into a ditch would definitely suggest that the tempo driven by the respondent No. 1 was in excessive speed, a finding which is already rendered by the Tribunal and with which we are in full agreement. It is difficult to appreciate that a motor-cyclist who wants to take a turn to the right side would not have made a signal, more particularly when he sees an oncoming bus. Even on the assumption that the rider of the motor cycle had not indicated that he was proceeding towards the right, from the manner in which the accident has taken place, it is difficult to accept the apportionment of responsibility in the ratio of 60 per cent to Regi and 40 per cent to the respondent No. 1, driver.

11. Before we conclude this aspect of the matter, we may make a reference about the sketchy evidence as to who was riding the motor cycle on the fateful day. Respondent No. 3 has asserted that he was a pillion rider at the time the accident took place Regi was riding the motor cycle. In the claim petition, the appellant averred that Regi was the pillion rider, but then she, however, admits that she had not seen the accident and obviously she was not in Goa. The Tribunal could not reach a finding on the existing material before it as to who was riding. For the view that we finally propose to take in the matter, we do not think that it is necessary to render a finding that either Regi Mathew or respondent No. 3 was riding the motor cycle on that fateful day. The appellant also does not invite us to render such a finding.

12. Coming back to the apportionment of the responsibility, we have already indicated the manner in which the accident took place and how the mini bus driven by respondent No. 1 was driven in excessive speed. Being so, in the absence of any special reasons being assigned by the Tribunal to apportion the liability in the ratio of 6:4, we find it safe to apply the responsibility in the ratio of

50 per cent to Regi and 50 per cent to respondent No. 1. Upon reaching this conclusion the compensation awarded needs to be redetermined; we have already adverted earlier that the compensation of Rs. 1,53,000/- was determined and which we have not disturbed and we maintain the same.

13. Mr. Bharne, learned Counsel for respondent No. 2, insurance company, indeed urged that before the institution of this appeal in satisfaction of the award, the insurer had paid a sum of Rs. 62,747.60 and the appellant herself had given a receipt acknowledging the same in full and final settlement of the claim. Mr. Bharne urged that once the appellant herself held out and received compensation in full settlement of her claim, it is not open to the appellant to have instituted the present appeal, nor is it open to this court to entertain the present appeal. We are, however, not enamoured by this submission. The right of appeal is a statutory right given under the Motor Vehicles Act and such a right cannot be taken away. It is not necessary to examine whether the arguments advanced would attract the principle of restraint against litigation which is opposed to law or public policy, for the simple reason that the appellant herself in the memo of appeal has averred in para 3 thereof that because she was in paucity of finance and urgent need of financial aid she accepted the payment from the insurance company. That apart, she has stated that she was pressurized into signing the receipt stating that it was in full and final settlement towards the award. We have already mentioned that the appellant was a resident of Kerala. Her son was employed in Goa and he met with an accident in Margao and died within four days from the date of the accident. This is not a case where the appellant suppressed the passing of the receipt by her and, on the contrary, came out on her own at the first opportunity that she was pressurized into passing the receipt. We are plainly aware that we are administering a welfare statute which is designed to pay compensation to the victims of the accidents or to dependants of the persons who met with tragic accidents. Being so, we are unable to see any force in the submission of the Counsel for the insurance company that this appeal should be defeated upon the so-called receipt stating that appellant has received the amount in full and final settlement towards the impugned award.

14. This appeal accordingly must partly succeed. The impugned award dated 28.2.1989 shall stand modified. The compensation determined at Rs. 1,53,000/- is maintained. However, the responsibility for the accident is apportioned between the two riders of the vehicles in the ratio of 50:50, with the result an amount of Rs. 76,500/- (50 per cent of Rs. 1,53,000) is awarded in the claim petition together with interest at the rate of 12 per cent per annum from the date of filing of the claim application until payment or satisfaction. The order of costs of Rs. 2,000/- is maintained. We are told at this stage that respondent No. 2, Oriental Ins. Co. Ltd., has already paid a sum of Rs. 62,747.40 inclusive of Rs. 15,000/- towards no fault liability, under a receipt duly signed by the appellant prior to the institution of the present appeal. This being the position, the amount received is liable to be deducted out of the compensation awarded. There shall

be no order as to costs in this appeal.