

(2016) 02 KAR CK 0103

In the Karnataka High Court

Case No : M.F.A. Nos. 31125, 31126, 31127, 31129, 31130/2009 and
31131/2009 (MV)

Mahadev and Others

APPELLANT

Vs

Shameem Nazneen and Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Citation : (2016) 02 KAR CK 0103

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Harshavardhan R. Malipatil, Advocate, for the Appellant; Jagannath S.K., Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

B. Manohar, J.—1. The appellants are the claimants in MVC Nos. 628/2007, 630 to 633 of 2007 and 1369/2007, being not satisfied with the quantum of compensation awarded in the judgment and award dated 28.03.2009 passed by the Fast Track Court-III at Gulbarga have filed these appeals, seeking for enhancement of compensation.

2. Since the common judgment and awards passed by the Fast Track Court have been challenged, all these appeals are clubbed together and disposed of by this common judgment.

3. The appellants herein filed the claim petitions before the Fast Track Court contending that on 01.02.2007 at about 8.30 p.m., the claimants along with other persons were proceeding in a jeep bearing Reg. No. MH-25-4359 to Tintani Mouneshwari Jatra. When the vehicle reached near Khalipat Rahaman darga on Gulbarga-Jewargi main road, due to the rash and negligent driving of the said jeep by its driver, he could not control the vehicle and dashed against the stationed tanker lorry bearing Reg. No. KA-32/A-4911. Due to that, the claimants have sustained grievous injuries to all parts of the body. Initially they had taken

treatment in the Government Hospital, Gulbarga. Thereafter, they were shifted to Basaveshwar Hospital at Gulbarga and also took higher treatment at Solapur. The claimants have contended that the driver of the tanker lorry without putting on the indicator or parking light, parked the vehicle in the middle of the road. Hence, the driver of the jeep dashed against the same and sought for compensation from the owner as well as the insurer of the offending vehicle.

4. The claimant in MVC No. 628/2007 contended that in the accident she has sustained cut lacerated wound over the chin and cut lacerated wound over the occipital region. She has taken treatment at Basaveshwar Hospital, Gulbarga. The wound certificate issued by the hospital has been produced at Ex.P22. She was in the hospital from 01.02.2007 to 04.02.2007. She claimed that she had spent huge money for treatment. Hence, sought for compensation.

5. The claimant in MVC No. 630/2007 contended that at the time of accident, he was aged about 44 years and working as a labour contractor. In the accident, he has sustained cut lacerated wound over the scalp, abrasion over the right arm, the fracture of left temporal parietal bone and bleeding in the right parietal region. Hence, sought for compensation.

6. The claimant in MVC No. 631/2007 contended that at the time of accident, he was aged about 45 years. In the accident, he has sustained abrasion over the right forehead and abrasion over the right forearm. The wound certificate is produced at Ex.P28.

7. The claimant in MVC No. 632/2007 contended that at the time of accident, he was aged about 65 years, working as a tailor. In the accident, he has sustained fracture of middle 1/3rd shaft of left humerus and multiple fracture of the left side.

8. The claimant in MVC No. 633/2007 contended that at the time of accident, she was aged about 50 years. In the accident, she has sustained cut lacerated wound over the forehead and injuries to other parts of the body. The wound certificate is produced at Ex.P38.

9. The claimant in MVC No. 1369/2007 contended that in the accident, he has sustained blood clot in the nose, contusion over the forehead and contusion over the nose and sought for compensation.

10. In Pursuance of the notice issued by the Fast Track Court, the owner of the offending vehicle filed the written statement denying the entire averments made in the claim petition and contended that due to the rash and negligent driving of the jeep, the accident had occurred. The driver of the tanker lorry had parked the vehicle on the extreme left side of the road, which is the State Highway. The parking of the lorry will not come in the way of ongoing vehicle and sought for dismissal of the claim petition.

11. The insurer of the offending vehicle filed the written statement denying the entire averments made in the claim petition and also contended that due to the

rash and negligent driving of the jeep by its driver, accident had occurred. The driver of the offending vehicle has taken sufficient care and he has put on the parking light. The parking of the vehicle can be seen from the long distance. For the negligence of the driver of the jeep, the insurer of the tanker lorry cannot be held liable and sought for dismissal of the claim petition.

12. The owner of the jeep though served with notice, he remained unrepresented.

13. The insurer of the jeep filed the written statement denying the rash and negligent driving of the jeep by its driver. On the other hand, it was contended that the driver of the tanker lorry parked the vehicle in the middle of the road without any indicator light, due to which, the accident had occurred. Further, the jeep was insured with the fourth respondent, which was an Act policy. It will cover the risk of the third party and do not cover the risk of inmates travelling in the jeep. The owner of the vehicle used the private Jeep as a public transport vehicle and acted in violation of the conditions of the policy. Hence, the insurer is not liable to compensate the claimants and sought for dismissal of the claim petition.

14. On the basis of pleadings of the parties, the Tribunal framed necessary issues. The three important issues framed by the Tribunal read as under:

"1. Whether the petitioner proves that on 01-02-2007 in the night at about 08.30 p.m. while she was travelling in a jeep bearing registration No. MH-25-4359 near Khalifat Rahaman Darga on Gulbarga Jewargi main road, at that time the jeep driver was found driving the vehicle in a rash and negligent manner with high speed and dashed against the lorry bearing registration No. KA-32-A-4911 from behind which was parked on the main road by its driver in a negligent manner and caused accident in which the petitioner sustained injuries on all over her body as alleged?

2. Whether the respondent No. 1 and 2 prove that the said accident was due to rash and negligent act of the driver of jeep bearing registration No. MH-25-4359 who dashed against the parked vehicle of the said respondents as alleged?

3. Whether the 4th respondent proves that the driver of the lorry bearing registration No. KA-32-A-4911 had parked the said lorry negligently without parking light which has caused the accident as alleged in para 7 of the W.S.?"

15. The claimants in MVC Nos. 628/2007 to 633/2007 in order to prove their case, examined themselves as PWs. 1 to 5, the doctors who treated the claimants were examined as PWs. 6 and 7 and got marked the documents as Exs.P1 to P41. The claimant in MVC No. 1369/2007 in order to prove his case got examined as PW.1 and got marked the documents as Exs.P1 to P6. On behalf of the respondents, the Administrative Officer of the insurance company was examined as RW. 1 and got marked the insurance policies as Exs.R1 and R2.

16. The Tribunal after appreciating the oral and documentary evidence let in by the parties and taking into consideration the spot panchanama, sketch, map, MVI

report, copy of the complaint and other relevant records, held that due to the rash and negligent driving of the jeep, the accident had occurred. The claimants have sustained injuries in the accident occurred on 01.02.2007. Hence, they are entitled for compensation. There is no negligence on the part of the driver of the stationed lorry. The lorry has been parked with a signal light and indicator on the extreme left side of the road. The claimants in their evidence have clearly admitted that due to the rash and negligent driving of the jeep, it dashed against the stationed lorry. The police records, spot panchanama and sketch corroborate the evidence of PWs. 1 to 5 and the lorry has been parked on the extreme left side of the road with the parking indicator. Hence, due to the negligence on the part of the driver of the jeep, the accident had occurred.

17. With regard to quantum of compensation is concerned, claimant in MVC No. 628/2007 has sustained cut lacerated wound over the chin and cut lacerated wound over the occipital region. The wound certificate issued by the Basaveshwar Hospital, Gulbarga as per Ex.P22 clearly discloses that the injuries sustained are simple in nature. Further, the CT scan reports as per Exs.P25 and P26 clearly show that head injury was normal. The claimant was working as a coolie. Taking into consideration the injuries sustained and the suffering undergone, the Tribunal has awarded a sum of Rs. 25,000/- towards pain and suffering, Rs. 10,000/- towards medical expenses, Rs. 5,000/- towards loss of income during laid up period and Rs. 1,000/- towards nourishment and transportation charges etc., since the claimant was an inpatient for a period of three days. In all, the Tribunal has awarded the compensation of Rs. 41,000/- with interest at 6% p.a.

18. The claimant in MVC No. 630/2007 has sustained cut lacerated wound over the scalp, abrasion over the right arm, the fracture of left temporal parietal bone and bleeding in the right parietal region. The CT Scan report discloses that fracture of left temporal parietal bone was confirmed. In view of the fracture of the parietal bone, he was getting headache over the left side. He had taken treatment in Gujarat State. After he returned to his work place, he continued to work as a labour contractor. The accident has not come in the way of his day to day activities. The doctor has assessed the disability to an extent of 22%. But, the Tribunal has assessed the disability to an extent of 10%. Taking into consideration the injuries sustained and the suffering undergone, the Tribunal has awarded a sum of Rs. 40,000/- towards pain and suffering, Rs. 20,000/- towards medical expenses, Rs. 10,000/- towards loss of income during laid up period, Rs. 75,000/- towards loss of enjoyment of life and amenities due to permanent disability and Rs. 5,000/- towards nourishment and attendant charges etc. In all, the Tribunal has awarded the compensation of Rs. 1,50,000/- with interest at 6% p.a.

19. The claimant in MVC No. 631/2007 has sustained simple injuries i.e., abrasion over the right forehead and abrasion over the right forearm. The wound certificate - Ex.P28 clearly discloses the said fact. For the minor injuries, the

Tribunal has awarded a sum of Rs. 10,000/- towards pain and suffering, Rs. 5,000/- towards medical expenses and Rs. 5,000/- towards loss of income during laid up period. In all, the Tribunal has awarded the compensation of Rs. 20,000/- with interest at 6%p.a.

20. The claimant in MVC No. 632/2007 has sustained fracture of middle 1/3rd shaft of left humerus. The CT Scan report - Ex.P35 discloses the fracture of left humerus and other injuries. The doctor who treated the claimant has assessed the disability to an extent of 45% to the particular limb. Taking into consideration the injuries sustained and the suffering undergone, the Tribunal has awarded a sum of Rs. 40,000/- towards pain and suffering, Rs. 50,000/- towards medical expenses, Rs. 5,000/- towards loss of income during laid up period, Rs. 5,000/- towards nourishment, attendant charges and transportation charges etc. and Rs. 60,000/- towards loss of enjoyment of life and amenities due to permanent disability. In all, the Tribunal has awarded the compensation of Rs. 1,60,000/- with interest at 6% p.a.

21. The claimant in MVC No. 633/2007 has sustained simple injury i.e., cut lacerated wound over the forehead. For the minor injuries, the Tribunal has awarded a sum of Rs. 10,000/- towards pain and suffering, Rs. 5,000/- towards medical expenses and Rs. 2,000/- towards loss of income during laid up period. In all, the Tribunal has awarded the compensation of Rs. 17,000/- with interest at 6% p.a.

22. The claimant in MVC No. 1369/2007 has sustained simple injuries i.e., blood clot in the nose, contusion over the forehead and contusion over the nose. Taking into consideration the injuries sustained, the Tribunal has awarded a sum of Rs. 15,000/- towards pain and suffering, Rs. 3,000/- towards medical expenses and Rs. 2,000/- towards loss of income during laid up period. In all, the Tribunal has awarded the compensation of Rs. 20,000/- with interest at 6%p.a.

23. With regard to the liability to pay the compensation is concerned, the insurance policy of the offending jeep is an Act Policy. It covers the risk of the third party and does not cover the risk of the inmates. The third respondent was using the private jeep in violation of the terms and conditions of the insurance policy. The record clearly discloses that in a private jeep, the third respondent/owner permitted the driver to carry the passengers. The claimants themselves admitted that on the date of accident, they were proceeding in a jeep bearing registration No. MH-25-4359 towards Tintani Mouneshwari Jatra. The inmates of the jeep are fare paid passengers. The private jeep is being used as a transport vehicle. The insurance policy does not cover the risk of those inmates. Accordingly, the liability has been fastened on the third respondent to compensate the claimants. Being aggrieved by the judgement passed by the Tribunal fastening the liability on the third respondent to compensate the claimants and exonerating the insurance company and also with regard to the quantum of compensation awarded by the Tribunal, the claimants in all the claim petitions have filed these appeals.

24. Sri Harshavardhan R. Mailpatil, the advocate appearing for the appellants in all these appeals contended that the judgment passed by the Tribunal fastening the liability on the third respondent - owner of the jeep to compensate the claimants is contrary to law. The finding of the Tribunal with regard to actionable negligence on the part of the driver of the jeep is also contrary to law. Further, the lorry was parked in the middle of the road on Gulbarga-Jewargi maid road, without putting parking lights or indicators or without keeping the stones around the lorry. It is incumbent upon the driver of the lorry to put the parking indicators when he parks the vehicle on the National Highway and it is mandatory. In the instant case, the lorry has been parked in a State Highway without indicator. In the nighttime if the vehicle has been parked without indicator, it will not be possible to see the oncoming vehicles in view of the headlights of the other vehicles. In the complaint lodged before the police as well as in the evidence, the claimants have specifically contended that the driver has parked the lorry without any parking lights or indicators. There is contributory negligence on the part of the driver of the lorry in the accident occurred on 01.02.2007. The finding of the Tribunal that the lorry was parked with an indicator light is totally incorrect.

25. In support of his contention, learned counsel for the appellants relied upon the judgments reported in

1. ILR 2011 KAR 4845 (North East Karnataka Road Transport Corporation vs. Smt. Vijayalaxmi and Others)
2. , ILR 2004 KAR 109 (Mohammed Mumtaz and Others vs S. Ravindranatha and Others)

And the order made in

3. MFA No. 10807/2007 disposed of on 01.08.2013,
4. MFA No. 5215/2012 C/W MFA No. 10093/2012 disposed of on 03.09.2015
5. MFA No. 30651/2012 disposed of on 20.03.2014
6. MFA No. 30126/2013 C/W MFA No. 32518/2012 disposed of on 24.01.2014

26. Further, he contended that the policy issued by the fourth respondent should have been treated as a comprehensive policy, since it was issued under Section 2(1) of Standard Norms of contract and as such the insurance company is liable to compensate the inmates of the vehicle. It is further contended that the compensation awarded by the Tribunal is on the lower side. For the fracture of femur and other injuries, meager compensation has been awarded. Hence, sought for setting aside of the judgment and awards of the Tribunal and enhancement of compensation.

27. On the other hand, the advocates appearing for the respondents argued in support of the judgment and awards passed by the Tribunal and contended that the lorry has been parked on the extreme left side of the road. The road width

was 50 feet. Out of which the tar road itself was 40 feet and mud road was 5 feet on each side. The lorry was parked on the extreme left side of the mud road. There was 40 feet road available for free movement of the vehicles. The lorry has been parked with the indicator lights. Due to the rash and negligent driving of the jeep with a high speed, driver could not control the vehicle and dashed against the right side of the lorry. The mudguard, bumper and indicator light of the lorry have been broken. After the accident, the jeep turned turtle. In the accident, the driver and one of the inmates died and other six inmates have sustained injuries. The accident had occurred due to the negligence on the part of the driver of the jeep. There is no infirmity or irregularity in the finding of the Tribunal and sought for dismissal of the appeals.

28. I have carefully considered the arguments addressed by the advocates appearing for the parties and perused the judgment and awards passed by the Tribunal and oral and documentary evidence adduced by the parties.

29. The record clearly discloses that the claimants have boarded the jeep bearing Reg. No. MH-25-4359 and proceeding towards Tintani Mouneshwari Jatra. On Gulbarga-Jewargi road, due to the rash and negligent driving of the said jeep, it dashed against the parked tanker lorry. Thereafter, it was turned turtle. Due to that, two persons died on the spot and other inmates have sustained injuries. The case of the appellants is that the tanker lorry was parked without putting any parking light or indicators and the driver of the jeep without noticing the parked lorry, dashed against the lorry resulting in occurrence of the accident. The specific plea of the appellants in their evidence is that the lorry was parked without any indicator. On the other hand, the owner and insurer of the tanker lorry have specifically pleaded that the lorry was parked with the indicator light on the extreme left side of Gulbarga-Jewargi State Highway. In view of the accident, the parking light of the lorry has been damaged. The inmates of the jeep have specifically admitted that the accident had occurred due to the rash and negligent driving of the jeep. Hence, the contributory negligence cannot be held against the driver and insurer of the lorry.

30. On the basis of the issues referred to above, the parties went for trial. PW.1 is the claimant in MVC No. 630/2007. He clearly admitted in the cross-examination that the parked vehicle could be seen upto half a kilo meter. in the headlight. The driver of the jeep has driven the jeep in a rash and negligent manner and in a high speed. PW.3 -Mahadev also clearly admitted that the road is a straight road, 250 feet can be seen through the headlight. He also clearly admitted that due to the rash and negligent driving of the jeep, the accident had occurred. PWs.2, 4 and 5 also stated that the driver of the jeep was driving the same in a high speed and rash and negligent manner. One of the witnesses clearly admitted that in view of the accident, the parking light of the lorry has been damaged. Hence, I am of the opinion that due to the rash and negligent driving of the jeep, the accident had occurred. There is no negligence on the part of the driver of the lorry in parking the vehicle on the extreme left side of the

road. The driver of the offending vehicle has clearly mentioned that the lorry was parked with the parking lights. The witness clearly stated that the parking light has been damaged in the accident. The Tribunal after examining the oral and documentary evidence, clearly held that the lorry has been parked with a parking light. I find that there is no infirmity or irregularity in the finding of the Tribunal in holding the negligence on the part of the driver of the jeep.

31. The insurance policy produced by the fourth respondent clearly discloses that the jeep was issued with the insurance policy, which was an Act policy; it covers the risk of the third party only and not the risk of inmates of the jeep. The third respondent ought not to have used the private jeep as a transport vehicle. In violation of the terms and conditions of the policy, the vehicle is being used as a transport vehicle. The claimants are not third parties, they are inmates in the jeep. Hence, the fourth respondent -insurance company is not liable to compensate the claimants. It is the responsibility of the owner to compensate the claimants. I find that there is no infirmity or irregularity in the said finding of the Tribunal fastening liability on the third respondent - owner of the jeep to compensate the claimants and exonerating respondent Nos. 1, 2 and 4.

32. With regard to quantum of compensation is concerned, except the appellants in MFA Nos. 31126/2009 and 31129/2009, all other appellants have sustained minor injuries i.e., lacerated wound or cut injuries. The injured claimants have recovered completely by taking suitable treatment and as such they have not chosen to examine the doctor who treated them. The injury sustained is a simple injury. The Tribunal has awarded the compensation towards pain and suffering, medical expenses and loss of income during laid up period. I find that there is no infirmity or irregularity in the quantum of compensation awarded by the Tribunal for the minor injuries sustained.

33. The appellant MFA No. 31126/2009 (MVC No. 632/2007) has sustained fracture of humerus of left side and other injuries to the body. The Tribunal has awarded the compensation of Rs. 1,60,000/- for the injuries he has sustained. A sum of Rs. 60,000/- awarded towards loss of enjoyment of life and amenities due to permanent disability is on the lower side. Hence, the appellant is entitled to another sum of Rs. 30,000/- under the said head. Thereby, the appellant is entitled for enhanced compensation of Rs. 30,000/- apart from Rs. 1,60,000/- awarded by the Tribunal.

34. The appellant MFA No. 31129/2009 (MVC No. 630/2007) has sustained fracture of left temporal parietal bone. He was continued in the same work of labour contract. The accident has not come in the way of his day to day activities. In view of the injuries sustained and fracture of the temporal parietal bone, he was getting headache on the left side. The Tribunal has awarded the compensation of Rs. 1,50,000/-. A sum of Rs. 75,000/- awarded towards loss of enjoyment of life and amenities due to permanent disability is on the lower side. Hence, the appellant is entitled to another sum of Rs. 50,000/- under the said head. Thereby, the appellant is entitled for enhanced compensation of Rs.

50,000/- apart from Rs. 1,50,000/- awarded by the Tribunal.

35. The finding recorded by the Tribunal in all other respects is in accordance with law. The judgments relied upon by the appellants are not applicable to the facts of these cases. In the judgments relied upon by the appellants, the lorry was parked without any indicators or parking lights. But in the instant case, the lorry was parked on the State Highway on the extreme left side of the road with the indicator. The witnesses in their cross-examination have clearly admitted that in the accident, the signal light has been damaged.

36. On perusal of the sketch, it is seen that the road width was 50 feet. Out of 50 feet road, the tar road covers 40 feet and the remaining 5 feet was mud road on each side. Though the lorry has been parked on the extreme left side of the mud road which covers 10 feet, 40 feet road was available for free movement of the vehicles. I find that there is no infirmity or irregularity in the finding of the Tribunal that there is no negligence on the part of the driver of the parked lorry. The appellants have not made out a case to interfere with the same. Accordingly, I pass the following:

ORDER

MFA Nos. 31125/2009, 31127/2009, 31130/2009 and 31131/2009 are dismissed. MFA Nos. 31126/2009 and 31129/2009 are allowed in part. The appellant in MFA No. 31126/2009 is entitled for enhanced compensation of Rs. 30,000/- with interest at 6% p.a. and the appellant in MFA No. 31129/2009 is entitled for enhanced compensation of Rs. 50,000/- with interest at 6% p.a.