

(2015) 09 KAR CK 0281

In the Karnataka High Court

Case No : MFA Nos. 10912 and 10494/2012 (MV)

Mamatha K.R. and Others

APPELLANT

Vs

K. Shivamurthy and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 09 KAR CK 0281

Hon'ble Judges : N.K. Patil and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : Jai Kumar, Advocate, for the Appellant

Judgement

N.K. Patil, J.—These two appeals are by the claimants and insurer of Honda Civic Car being aggrieved by the impugned judgment and award dated 2nd August 2012 passed in MVC No. 8310/2009 on the file of the VIII Additional Judge, Member MACT, Court of Small Causes, Bangalore City (hereinafter referred to as "Tribunal" for short).

2. The Tribunal by its judgment and award has awarded a sum of Rs. 90,000/- with 6% interest after deducting 60% towards contributory negligence on the part of the deceased.

3. It is case of the claimants that the compensation awarded by the Tribunal is inadequate and it requires enhancement. Further it is case of the claimants that fixing 60% contributory negligence on the part of the deceased is liable to be modified by reducing contributory negligence on the part of the deceased driver of the Maruthi Omni car. Therefore, both felt necessitated to present these two appeals respectively.

4. In brief, the facts of the case are:

"The 1st claimant is mother and 2nd claimant is brother of the deceased Kum. Sneha and they have filed a claim petition before the Tribunal under Section 166

of M.V. Act, claiming compensation on account of the death of the deceased in the road traffic accident, contending that, the deceased by name Kum. Sneha, on 26.10.2008 at about 2.15 p.m and the father of the deceased were proceeding in a Maruthi Omni vehicle bearing registration No. KA-02 MC 8815 along with other family members. When they reached near Thittanahosahalli gate, Bindiganavile on National High Way 48, the driver of Honda Civic Car being registration No. KA.03.MH.5665 came in a rash and negligent manner and dashed against the Maruthi Omni car. Due to the impact, the driver of Maruthi Omni car i.e the father of the deceased and Kum.Sneha sustained grievous injuries and succumbed to the injuries on the spot. Other family members in the Maruthi Omni car also sustained grievous and small injuries respectively."

5. Further it is the case of the claimants/mother and brother of the deceased that the mother has lost her minor daughter and brother has lost his sister's love and affection and suffered mental agony. The deceased was minor and not an earning member and was aged about 15 years as on the date of the accident.

6. The said claim petition had come up for consideration before the Tribunal. The Tribunal after appreciating the oral and documentary evidence and other material available on record has allowed the claim petition in part and awarded the compensation of Rs. 90,000/- with interest at 6% p.a., from the date of petition till the date of deposit, after deducting 60% towards contributory negligence on the part of the driver of the Maruthi Omni Car. Not being satisfied with the compensation awarded by the Tribunal, the appellants have presented this appeal, for enhancement of compensation.

7. Sri. Jaikumar, learned counsel appearing for the claimants submitted that the Tribunal erred in not awarding reasonable compensation and in the light of the judgment of Apex Court and this Court, the same is liable to be modified. To substantiate his submission he relied upon the judgment of Apex Court reported in Kishan Gopal and Another Vs. Lala and Others, , wherein the Apex Court has awarded Rs. 5,00,000/- as compensation on account of death of the minor in the road traffic accident.

8. Per contra, Sri. B.C Shivanne Gowda, learned counsel appearing for the Insurer inter alia contended and substantiated that, the impugned judgment and award passed by the Tribunal is just and proper and the compensation awarded is also just and proper and is passed after consideration of the oral and documentary evidence and interference by this Court is not called for.

9. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the points that arise for consideration are:

"1. Whether the fixing of 60% contributory negligence on the part of the deceased driver of the Maruthi Omni Car is sustainable in law?

"2. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?"

10. Re-point No. 1: In view of the findings given by us while answering point No. 1 in the connected appeal MFA No. 10495/2012 c/w MFA No. 10913/2012 for upholding contributory negligence fixed on the part of the deceased rider of the motor cycle at 60%. We hereby confirm the contributory negligence fixed on the part of the deceased at 60% in these case also.

11. Re-point No. 2: The occurrence of the accident and resultant death of the deceased Kum. Sneha in the road traffic accident at about 2.15 p.m is not in dispute. Claimants are none other than the mother and brother of the deceased, which is also not in dispute. The vehicle involved in the accident is Maruthi Omni Car, bearing registration No. KA-02/MC-8815 and Honda Civic Car bearing registration No. KA-03/MH-5665, which is also not in dispute. As rightly pointed out by the learned counsel appearing for the claimants in the light of the judgment of Apex Court reported in Kishan Gopal and Another Vs. Lala and Others, wherein the Apex Court as awarded a sum of Rs. 5,00,000/- on account of the death of the minor child aged between 10 to 15 years, we award Rs. 5,00,000/- on account of untimely death of the child who was aged about 15 years as against Rs. 2,25,000/- awarded by the Tribunal.

12. Having regard to the facts and circumstances of the case as stated above, appeal filed by the appellant-insurer is dismissed as devoid of merits and appeal filed by the claimants is allowed in part. The impugned judgment and award passed by the Tribunal dated 2nd August 2012 in MVC No. 8310/2009 is hereby modified. The total compensation payable comes to Rs. 5,00,000/- as against Rs. 2,25,000/- awarded by the Tribunal. There will be an enhancement of Rs. 2,75,000/- with interest at 6% per annum.

13. As held above at point No. 1, in view of the contributory negligence fixed on the part of the deceased driver of the Maruthi Omni Car at 60%, the claimants are entitled to 40% of the enhanced compensation i.e Rs. 1,10,000/- with interest at 6% p.a, from the date of petition till the date of realization.

The insurer is directed to deposit the enhanced compensation of Rs. 1,10,000/- with interest at 6% p.a., from the date of petition till the date of realization within three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation of Rs. 1,10,000/- Rs. 50,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of the 1st claimant/mother for a period of ten years and renewable for another five years, with liberty to her to withdraw the interest accrued on it periodically.

The remaining Rs. 60,000/- with proportionate interest shall be released in favour of the 1st and 2nd claimants in equal proportion, immediately, on deposit by the 2nd respondent-Insurer.

Draw the award, accordingly.

O Mahesh, learned counsel is permitted to file vakalath within four weeks.