
(2016) 08 KAR CK 0044

In the Karnataka High Court

Case No : M. F. A. No. 10770 of 2011 (MV).

Managing Director, K.S.R.T.C., Bangalore - Appellant @HASH Smt. Anitha Joseph

Date of Decision : 10-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 2347

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Smt. Sumangala A. Swamy, Advocate, for the Appellant; Smt. Suguna R. Reddy, Advocate, for the Responent

Final Decision : Dismissed

Judgement

Mrs. S. Sujatha, J. - The KSRTC (Corporation, for short) as well as the claimants are before this Court. Since these cases arise out of the same accident and against the common Judgment passed by the Motor Accident Claims Tribunal, Bangalore ("Tribunal", for short), in MVC Nos.5555 to 5557 of 2008, the matters are heard together and disposed of by this common Judgment.

2. Briefly stated the facts are, the claimants instituted claim petition seeking compensation for the injuries sustained by them, as well as for the damages to the vehicle in the motor vehicle accident which occurred on 29.3.2008 while travelling in the Acura Honda vehicle bearing No.KA-01/L-7193, owing to the actionable negligence on the part of the driver of the bus bearing No.KA-01-F-7421 which was under the control of the Corporation. The Corporation contested the matter. The Tribunal allowed the claim petitions in part awarding compensation to the claimants fastening liability at 80% on the Corporation fixing contributory negligence at 20% on the rider of the motorcycle No.KA-07-L-7193 and dismissed the claim petition with regard to damages to the Honda Acura vehicle. Being aggrieved, both the Corporation, as well as the claimants are before this Court challenging the liability and the quantum, besides the claimants challenging the dismissal of the claim petition in much as the damages

claimed to the vehicle.

3. The learned counsel appearing for the Corporation submitted that the alleged accident occurred only due to the negligence of the rider of Honda Activa scooter which is evident from Ex.P4-IMV Report, which discloses that front portion of the Honda Activa scooter and the outer wall of the rear right side wheel of the KSRTC bus were damaged in the accident. Corporation had examined the driver of the bus as RW-1 who had categorically deposed the factum of negligence of the rider of Honda Activa which caused the accident. The tribunal brushing aside this vital evidence fastened 80% of liability on the Corporation. Elaborating her arguments on this point the learned counsel invited the attention of this court to paragraphs 9 and 10 of the impugned Judgment to contend that though the Tribunal held that the rider of the Honda Activa scooter was responsible for the occurrence of the accident, due to the rash and negligent riding while negotiating through a curve road, in order to fix the liability on the driver of the Corporation bus, fastened the liability to an extent of 80% and 20% on the rider of the Honda Activa scooter which is unsustainable. The learned counsel further submits that the quantum of compensation awarded by the Tribunal is being excessive, requires to be scaled down in the background of the nature and gravity of injuries sustained by the claimants.

4. Per contra, learned counsel appearing for the claimants contended that the claimants were travelling in Honda Activa vehicle which is a light motor vehicle. The bus belonging to the corporation, admittedly, is a heavy vehicle, the rash and negligent driving of the driver of the bus was the root cause for the occurrence of the accident. The learned counsel placing reliance on Ex.P2, spot mahazar would contend that the front bumper portion of the bus was damaged, however, this damage was not noticed by the IMV while giving the report, marked as Ex.P4. Ex.P4 would not throw light on the negligence aspect of the drivers of both the vehicles. The Corporation has constructed the case based on the IMV Report-Ex.P4, not supported by any material evidence. There is no direct evidence to prove the negligence of the rider of Activa Honda in causing the accident. In support of her contentions, the learned counsel placed reliance on the following Judgments of the Apex Court and this Court:

1. Kumari Kiran v. Sajjan Singh and others (2014 AIR SCW 6328)
2. Yerramma and others v. G. Krishnamurthy and another (2015 AIR SCW 514): (AIR 2015 SC 1145).
3. Jiju Kuruvila and others v. Kunjamma Mohand and others (2013) 9 SCC 166 : (AIR 2013 SC 2293).
4. R.P. Zuber v. Basavarajappa and Others (MFA No.4748/2011 (MV) DD 6.7.2015) : (2015 (4) AKR 628).
5. Placing reliance on these Judgments, the learned counsel submitted that the contributory negligence apportioned by the Tribunal on the rider of the Honda

Activa vehicle is untenable in the context of the heavier vehicle involved in the accident. PW-1 and 3 have deposed to prove the negligence of the driver of the bus, the mere suspicion based on Ex.P4 , IMV Report, cannot be given any credence in the absence of any direct or corroborative evidence. It is her contention that the heavy passenger motor vehicle plying on the road must take extra care and caution. Had the driver of the bus taken little care and caution while negotiating the curve, the accident could have been averted. Considering the width of the road and the circumstantial evidence, the Tribunal, on suspicion, fixed contributory negligence at 20% on the rider of the motor cycle which is wholly unsustainable. It is further contended that inasmuch the claimant Smt. Anitha Joseph being a pillion rider, no contributory negligence could have been fixed.

6. As regards quantum, learned counsel submitted that the compensation awarded by the Tribunal under different heads is meager compared to the nature of the injuries sustained by the claimants. Learned counsel further submitted that the claimant in MVC 5555/2008 Sri. George Kuriala was working as Chef-defendant-Partie at Grand Hotel, Sharjah, United Arab Emirates, earning salary/income of 2000 dirhams i.e. Rs. 21,000/- in Indian currency per month. Placing reliance on Ex.P7, a certificate said to have been issued by Personal Manager, Grand Hotel, Sharjah contends that this vital evidence was ignored by the Tribunal while determining the monthly income of the claimant George Kuriala. A paltry sum of Rs. 4,000/- per month is notionally determined as the income of the said claimant. As regards the permanent disability sustained by the claimant-George Kuriala, PW-4, doctor had assessed at 15% due to fracture of spine right scapular and 5% to the whole body. In the absence of any rebuttal evidence led by the Corporation to the contrary, the functional disability of the said claimant was assessed by the Tribunal at 3%, which is too low vis-a-vis injuries reflected in the medical records available on record.

7. As regards MVC 5556/2008, it was submitted by the learned counsel that the claimant was working as a teacher at Vidya Jyoti school and drawing salary" of Rs. 8,000/- per [month. Disbelieving the same, the Tribunal 1 determined the monthly income of the claimant at Rs. 4,000/- notionally. The compensation awarded under different heads is on lower side.

8. As regards MVC No.5557/2008, it was [contended that the compensation claimed towards the vehicle damage was not properly appreciated in the right perspective by the Tribunal. The Tribunal, totally rejecting the claim of the claimant towards vehicle damages is untenable.

9. Heard the rival submission of the parties and perused materials on record.

Re: Liability:

10. It is discerned from the records that the accident in question occurred through curve road as per Ex.P4- IMV Report, the front portion of the Honda Activa scooter and the outer wall of the rear right side of the wheel of the

Corporation were damaged in the accident, considering the spot mahazar, Ex.P2 which indicates that the bumper portion of the bus was damaged, further it reveals that at the place of the accident, the road was curve, brake marks were found on the middle of the road to an extent of 15 feet, while negotiating through the curve road, the bus driver occupied middle portion of NH-4 road and applied brakes. It is trite that when two vehicles coming from opposite directions collide, the actionable negligence of the drivers has to be ascertained based on the position of the vehicles and its direction, depends on number of factors like speed of the vehicle, intensity of collusion, place at which one vehicle hit the other, etc., but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver or not. The ocular evidence of the drivers of both the vehicles is not worthy of acceptance since they are the self interested witnesses. No other independent witness is examined to establish the factum of negligence of the drivers. In such an eventuality, the Court has to look into the other material evidence to find out the negligence aspect. In such situation, it would be appropriate to refer to the theory of heavy vehicle light vehicle. It has come on record that brake marks were found on the middle of the road to an extent of 15 feet which indicates that the bus driver was in a high speed and not maintained the traffic rules keeping on left side of the road. On the contrary, he had occupied middle portion of NH-4 road and applied brakes. This would suggest negligence on the part of the driver of the heavier vehicle-bus. The Apex Court in the cases of Kum.Kiran (2014 AIR SCW 6328) (supra) and Yerramma (AIR 2015 SC 1145) (supra) has held that the driver of the Corporation bus should have been aware of the fact that he was driving the heavy passenger motor vehicle and that it was necessary for him to take care and caution of the other vehicles on the road. Had the driver of the offending vehicle taken sufficient care and caution and allowed reasonable space for other vehicles on the left side of the road, the accident could have been averted. Having held thus, the Hon"ble Apex Court set-aside the apportionment of negligence at 25% on the part of the deceased in the background of the case of no evidence adduced in this regard by the respondents therein. Based on the material evidence produced on record by the claimants therein, fixed the negligence on the driver of the Corporation bus. In the case of Jiju Kuruvila and others (AIR 2013 SC 2293) (supra), the Hon"ble Apex Court has held that negligence cannot be determined on mere presumptions and surmises, but it has to be based on evidence; in the absence of any direct or corroborative evidence, the Court cannot give any finding about negligence on the part of any individual.

11. In the case on hand, both the parties have led evidence in support of their claim. It is true that the driver of the heavier vehicle had not taken the required precaution and care while negotiating the curve, similarly, the rider of the Activa Honda also contributed but to a lesser extent in not taking required care and caution. Appreciating the evidence on record, the Tribunal rightly fixed the liability at 80% on the driver of the Corporation bus and 20% on the rider of the

Honda Activa, which is justifiable. Challenge made by both the parties on this aspect is negated. In MFA No. 10770/2011, the Corporation is challenging the entire liability fixed on the Corporation. Admittedly, the claimant in this case was a pillion rider. Ordinarily, no negligence would be attributable on the pillion rider unless a special case is made out to establish the factum of negligence on the pillion rider. In the present case, no negligence is alleged/proved on the part of the pillion rider. Hence, the Tribunal fixing the entire liability on the Corporation cannot be found fault with.

Re: Quantum of Compensation:

12. As regards MFA No.2872/2012 (MVC 5555/2008) is concerned, it is evident from records that the claimant asserted that he was working as Chef-defendant-Parties at Grand Hotel, Shaijah, United Arab Emirates, earning 2000/- dirhams Rs. 21,000/- per month in Indian currency, however no convincing evidence was placed to substantiate the income earned by him. In the absence of cogent evidence available on record, the Tribunal determined the monthly income notionally at Rs. 4,000/-. In the circumstances, this court is of the considered opinion that income of the claimant can be re-determined at Rs. 5,000/-per month, since Ex.P7 is not proved. The claimant had sustained the following injuries;

(1) wasting of shoulder muscles

(2) irregular thickening of spine of scapula with irregular thickening of acromion process of right scapula

(3) Abduction of right shoulder is restricted about 15 degree terminals and rotation of shoulder-external rotation and internal rotation about 10 and 12 degree respectively.

as per wound certificate and the evidence of PW-4, treated doctor had assessed the permanent physical disability of 15% due to fracture of spine rights scapular and 5% to the whole body. Considering the physical disability of 5% to the whole body, as assessed by the doctor, loss of future income works out to Rs. 45,000/- (Rs.5,000 x 12 x 15x 5%). Similarly loss of income during laid up period would be at Rs. 15,000/-. In all other respects, the compensation awarded by the Tribunal remains undisturbed. Thus, the compensation awarded by the MACT is modified as under:

SI. No.

Nature of Heads

Amount (Rs.)

1.

pain and suffering

20,000/-

2.

Loss of income during laid up period

15,000/-

3.

loss of future income on account of permanent physical disability

45,000/-

4.

medical and incidental expenses

12,000/-

5.

loss of amenities

15,000/-

TOTAL

1,07,000/-

The claimant in MVC 5555/2008 shall be entitled to compensation of Rs. 1,07,000/- as against Rs. 70,600/- awarded by the Tribunal with interest at 6% per annum.

13. On the quantum of compensation, in MFA No.2874/2012 (MVC 5556/2008), it is discerned that the claimant had sustained the following injuries in the accident:

- (1) Fracture shaft of right mid femur
- (2) Fracture right lower 1/3rd femur
- (3) Lateral condyle fracture of right tibia
- (4) Sutured cut lacerated wound over left side scalp
- (5) cut lacerated wound over right thigh
- (6) Abrasion over right knee joint
- (7) Head injury.

The claimant had taken treatment first at the MVJ Medical Hospital and Research Centre, Hoskote and thereafter shifted to Accident and Trauma Centre, Kolar wherein she had taken treatment from 29.3.2008 to 9.4.2008. PW-4, the treated doctor has assessed the permanent physical disability of 48% to the right lower limb and 17% to the whole body. It is also opined by the said doctor that with the said disabilities the claimant would not be in a position to do teaching work

as earlier. In other words, the functional disability of the claimant has reduced drastically resulting in financial loss. The Tribunal disbelieving the version of the doctor, PW-4 assessed the permanent physical disability at 12% to the whole body. In the background of the factual matrix of the case, the claimant, being a teacher by profession, no fault can be found with the assessment made by the Tribunal in as much as the permanent physical disability at 12%. However, the income assessed by the Tribunal notionally at Rs. 4,000/- per month is abysmally low compared to the occupation of the claimant, a teacher. Even assuming no cogent evidence was placed on record by the claimant to establish the exact income, Rs. 5,000/- per month would be just and fair income considering the fact that she was working at Vidya Jyothi School as a teacher coupled with Ex.P18 certificate dated 29.8.2010 issued by the Principal, Vidya Jyothi School, Kolar, which certifies that the claimant was on leave from 29.3.2008 to 18.8.2008 and half the salary amount of Rs. 4,996/- was paid since no medical reimbursement facility was available in their institution as against the salary of Rs. 9,831/- drawn by the claimant during the month of March 2008 though not satisfactorily proved. Thus, the loss of future earning on account of permanent physical disability would work out to Rs. 1,08,000/-. A meager sum of Rs. 5,000/- is awarded towards loss of amenities. Considering the nature and gravity of injuries sustained by the claimant, hospitalisation period of 12 days as an inpatient. coupled with the medical documents available on record, the court is of the opinion that it would be just and appropriate to award compensation of Rs. 15,000/- towards loss of future amenities on account of the discomforts and inconvenience which the appellant has to face for the rest of her life. A sum of Rs. 5,000/- is awarded towards attendant, conveyance and incidental charges . Thus, the compensation awarded by the Tribunal is modified as thus:

SI. No.

Nature of Heads

Amount(Rs.)

1.

pain and suffering

35,000/-

2.

loss of income during laid up period

30,000/-

3.

loss of future income on account of permanent physical disability

1.08,000/-

4.

medical and incidental expenses

75,000/-

5.

Special diet, nourishment, etc

5,000/-

6.

loss of amenities

15,000/-

TOTAL

2,68,000/-

Thus, the claimant in MVC 5556/2008 shall be entitled to compensation of Rs. 2,68,000/- as against Rs. 2,25,400/- awarded by the Tribunal with interest at 6% per annum.

14. As regards MFA No.2873/2012 (MVC 5557/2008), the appellant is before this Court claiming compensation for the damages sustained to the vehicle Honda - activa scooter bearing No.KA-07-L-7193 in the very same accident. It emerges from Ex.P23 that Satya Sai Honda, authorised sub-dealer for Honda vehicles at Kolar had issued an estimation in a sum of Rs. 7,494/- towards repair charges including the cost of labour charges, spare parts and other miscellaneous charges. Ex.P4 is the bill-cum-cash receipt for having paid Rs. 7,494/-. It is apparent neither the surveyor who assessed the damage nor the mechanic who repaired the Honda activa scooter was examined. This court in the case of KSRTC v. George Nenum reported in ILR 2000 Kar 2009 has held that unless the author of the documents and mechanic who repaired the vehicle are examined to prove the amounts spent by the claimant towards repairs, no special damages can be awarded. The Tribunal following the said Judgment and in the context of the case, wherein the surveyor, mechanic and the owner of the workshop were not examined, rejected the claim of special damages towards the damage caused to the vehicle. The judgment of R.P. Zuber (2015 (4) AKR 628) (supra) is not applicable to the facts of the present case. As aforesaid, in the absence of relevant witnesses not being examined, no documents produced by the claimant would assist the claimant to seek special damages. Thus, the rejection of the claim petition by the Tribunal is fit to be sustained. The appeal does not merit any consideration and stands dismissed.

To sum up,

(i) MFA No. 10528/2011 filed by the KSRTC is dismissed confirming the

negligence fixed on the part of the driver of the KSRTC Bus at 80% and contributory negligence at 20% on the part of the rider of activa honda; quantum of compensation is enhanced to Rs. 1,07,000/- in MFA No.2872/2012 as indicated in paragraph No. 12 above. MFA No.2872/2012 is allowed in part.

(ii) MFA No. 10770/2011 filed by the KSRTC is dismissed. No negligence can be fixed on the part of the pillion rider in the absence of any special circumstances made out by the KSRTC to establish the factum of negligence attributable to the pillion rider. Quantum of compensation is enhanced to Rs. 2,68,000/- in MFA No.2874/2012 as indicated in paragraph 13 above. MFA No.2874/2012 is allowed in part.

15. MFA No.2873/2012 filed by the claimant stands dismissed confirming the Judgment and order passed by the Tribunal. Claim of special damages towards the damage caused to the vehicle is rejected.

16. The amount in deposit shall be transferred to the jurisdictional Tribunal for disbursement.