

(2001) 12 KAR CK 0028

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 352 of 1995

N.A. Gangamma and Others

APPELLANT

Vs

K.S. Yakub and Others

RESPONDENT

Date of Decision : 05-12-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 173 (1)
Penal Code, 1860 (IPC) — Section 304 A

Citation : (2002) 2 ACC 190 : (2003) ACJ 1040 : (2002) ILR (Kar) 647 : (2002) 2 KarLJ 39 : (2002) 1 KCCR 273

Hon'ble Judges : D.V. Shylendra Kumar, J;A.M. Farooq, J

Bench : Division Bench

Advocate : P.K. Ponnappa, for the Appellant; G. Balakrishna Shastry, H.G. Ramesh and K.T. Gurudevaprasad, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This appeal tinder Section 173(1) of the Motor Vehicles Act. 1988 (hereinafter referred to as "the Act" for short) is directed against the judgment and award dated 12-12-1994 passed in M.V.C. No. 83 of 1993 by the District Judge and Motor Accidents Claims Tribunal at Madikeri, Kodagu.

2. The claimants in the M.V.C. case are the appellants herein and are aggrieved by the said judgment and award whereby their claim for compensation as dependents of one Anand N.N., who died in a motor accident, has been negatived by the Tribunal. The Tribunal was of the view that the claimants were not able to prove that the driver of the lorry bearing No. CNZ 5126 which was involved in the accident that took place on 2-1-1993 between the lorry and a motor cycle in which the deceased victim was a pillion rider and had suffered injuries at the time of the accident and died later, drove the lorry in question in a rash and negligent manner. The appellants, being aggrieved, are in appeal before this Court.

3. The brief facts leading to the above appeal are that, as on 2-1-1993 one Ananda, who was the husband of the first appellant and father of appellants 2 and 3, was travelling as a pillion rider on a motor cycle bearing No. CNZ 1236 belonging to the third respondent at the relevant time; that the motor cycle was being driven by one K.M. Chandrakanth, brother of the third respondent, while the accident victim N.N. Anand was his companion on the pillion. The version of the claimants was that when the said motor cycle was moving near Bharathi Estate curve on the highway leading to Somwarpet near Negale Karkalli, the lorry bearing No. CNZ 5126 coming from Somwarpet side at a great speed and in a rash manner, which surprised and shocked the motor cycle rider, who had to swerve suddenly to the extreme left of the road to avoid collision and still the lorry hit the motor cycle, as a result of which the pillion rider fell down to the road and sustained injuries. The pillion rider was shifted to Somwarpet Hospital and he succumbed to the injuries. The fall of the pillion rider resulting in injury leading to his death are attributed to the rash and negligent manner of driving of the lorry and the said Ananda having died, the appellants put forth the claim before the Motor Accidents Claims Tribunal.

4. The first respondent in the claim petition was the driver-cum-owner of the lorry; the second respondent was the insurance company which had issued insurance policy in respect of the lorry, and the owner of the lorry, the third respondent, had been impleaded by way of abundant caution.

5. The owner-cum-driver of the lorry as well as the insurance company contested the claim. The owner-cum-driver contended that the claim is a false claim; that the compensation amount of Rs. 3,00,000/- claimed in the claim application was highly excessive and exorbitant, the claim petition is not tenable in terms of the Motor Vehicles Act and the petition is also bad for non-joinder of all the parties etc.

6. It appears that the owner-cum-driver of the lorry, the insurance company and the owner of the motor cycle were the respondents in the claim petition initially. However, later on, having regard to the stand that had been taken by the insurance company, the rider of the motor cycle has been impleaded as the respondent during the pendency of the appeal as per order dated 7-5-1998.

7. The second respondent-insurance company opposed the claim petition inter alia, on the ground that the income of the assessee was not Rs. 3,000/- per month; that the allegation of accident being due to the rash and negligent driving by the first respondent, was not admitted and the claimants were put to strict proof of the same; the rider and the insurer of the motor vehicle having not been impleaded, the petition was bad for non-joinder of necessary parties; that the claimants were put to strict proof of the fact that the death of the said Ananda was due to the injuries sustained in the course of the accident; that the compensation amount is on the higher side etc.

8. In view of the rival pleadings, the Tribunal framed the issues as to the

claimants" ability to prove that the lorry in question was being driven in a rash and negligent manner and causing the accident, as to whether the claimants prove that the said Ananda died on account of the said accident and whether the claimants are entitled to any compensation and if so, to what extent and regarding non-arraigning of necessary parties.

9. The Tribunal answered the first issue against the claimants by holding that the claimants were not able to prove that the accident had occurred due to the rash and negligent driving of the lorry in question; that though the death of the deceased Ananda was due to the accident, it was not proved that the death is attributable to the accident caused by the lorry in question and as such held that the claimants were not entitled for any compensation, The Tribunal also held that the petition was also bad for non-joinder of necessary parties for not impleading the rider of the motor cycle and the insurer of the motor cycle.

10. The claimants, in support of their case, had examined two witnesses including Smt. Gangamma, the first claimant and marked as many as fourteen documents.

11. On behalf of the respondents, the insurance policy in respect of the lorry was exhibited.

12. The first claimant, P.W. 1 in her deposition has stated that her husband, while travelling on the motor cycle as a pillion rider, was hit by the lorry in question which came from the opposite direction at a great speed; that due to the fall, he suffered severe injuries and that he was shifted to Somwarpet Hospital where he breathed his last. He was aged 38 years, was hale and healthy, was running a fair-price shop and general/provisions store; had also been looking after the lands and coffee estate apart from the business in building material and had an income of more than Rs. 3,000/- per month; had incurred a sum of Rs. 15,000/- towards funeral expenses and further a sum of Rs. 15,000/- towards obsequies; that the two children were studying in a convent at Somwarpet and was incurring Rs. 12,000/- towards education expenses from out of the income of the deceased husband; that after the death of her husband, they are unable to run the fair-price shop; that the lands are also not being looked after properly and the income from the land has reduced drastically and also got marked Exs. P. 1 to P. 13. Ex. P. 1 is a copy of FIR, Ex. P. 2 is the charge-sheet, Ex. P. 3 is the spot mahazar, Ex. P. 4 is the post-mortem report, Ex. P. 5 is the Inquest Report, Ex. P. 6 is the police notice, Ex. P. 7 is the Form D, etc. In cross-examination she denied that the death of her husband was not due to the accident and he was not carrying on business in building material etc. She denied the suggestion that the expenses towards funeral and obsequies was as high as claimed.

13. P.W. 2, one Karyappa who claimed to have witnessed the accident, deposed that the accident took place near Nagala Karkalli village; that the deceased Ananda and Chandrakantha were travelling on the motor cycle and going to Somwarpet; that the lorry which was coming from Somwarpet side was being

driven at a rash and negligent manner and dashed against the motor cycle; that the deceased Ananda suffered injuries on his body and head; he saw him bleeding from the ears and on the head; they took the victim to Somwarpet Hospital in an auto rickshaw and the victim died in hospital. He denied a suggestion in the cross-examination that the cause of the accident which took place near a curve was due to the fact that the motor cycle came on the wrong side of the road near the curve. This witness had also denied the suggestion that he was deposing in favour of the claimants to help them and said that he did not have the acquaintance of the claimants at any time earlier, but he had the acquaintance of the deceased. The first information report, Ex. P. 1 gave particulars of the accident and a case had been registered under Sections 279 and 304-A of the Indian Penal Code and had been informed by the rider of the motor cycle and inter alia contended that the informant had stated to the effect that while he swerved the motor cycle to the extreme end of the road to avoid collision with the oncoming speeding lorry, the pillion rider fell down and got injured. However, the informant has stated that due to the rash and negligent driving of the lorry which came from the opposite side, the commotion scared and caused his pillion rider to fall on the road and was injured. The complainant prayed for action against the driver for rash and negligent manner of driving. Ex. P. 2 is the charge-sheet copy accusing the first respondent of offences punishable under Sections 279 and 304-A of the Indian Penal Code. Ex. P. 3 is the spot mahazar.

14. The Tribunal, on looking into the contents of the FIR has noticed that the complainant himself stating that the pillion rider fell down out of fear on seeing the lorry coming in a rash and negligent manner and not due to any impact of the lorry colliding with the motor cycle. On a perusal of the spot mahazar, the Tribunal has concluded that having regard to the width of the road which was 18 at the spot of accident, it is not clear as to on which portion of the road the collision had taken place between the lorry and the motor cycle to indicate who was at fault, since Ex. P. 3, spot mahazar is silent in this regard. Neither the FIR nor the evidence of the witnesses having indicated exactly as to on which side of the road bloodstains had been noticed, Exs. P. 1 to P. 3 do not help the petitioner-claimants to prove that the accident was due to rash and negligent driving of the lorry. The Tribunal accepted the argument of the respondents that the FIR being the document providing particulars at the earliest point of time, should be given importance and the rider of the motor cycle himself having stated that the victim fell down due to fear and commotion, it cannot be said that the accident could be attributed to the rash and negligent driving of the lorry by the driver of the lorry. Further, the fact that the rider himself did not suffer any injury and the damage to the motor cycle was minimal was taken note of by the Tribunal to conclude that the accident cannot be attributed to the rash and negligent driving of the vehicle by the driver of the lorry. The absence of any witnesses saying that the lorry dashed against the motor cycle was also a deices factor according to the Tribunal to hold that the accident was not due to the rash and negligent driving

of the vehicle by the driver of the lorry but the deceased himself was responsible for the accident. In this view of the matter, Issue No. 1 was answered against the claimants.

15. The Tribunal, on the material on record, did find that the death of the deceased was due to the accident, but since the accident itself was not linked to the rash and negligent driving of the lorry, concluded that no compensation could be awarded in favour of the claimants. It is under such circumstances, the petitioner-claimants being aggrieved, have preferred this appeal.

16. Learned Counsel for the appellant has contended that the Tribunal has erred in holding that the accident was not due to the rash and negligent manner of driving of the vehicle; that the Tribunal has misread the evidence on record; the fact that the lorry did hit the motor cycle and the motor cycle had been damaged, though not extensively, and the fact that the impact or even the manner of driving the lorry in a rash and negligent way was the cause for fall of the pillion rider of the motor cycle resulting in injuries and death clearly indicates that the accident is attributable directly to the manner of driving of the lorry and as such the issue should have been answered in favour of the appellants and compensation as claimed, should have been awarded. The learned Counsel further submits that the respondents in fact did not examine the driver of the lorry who had caused the accident and as such, based on the evidence produced on behalf of the petitioner-claimants, the claim petition should have been allowed. The learned Counsel further submits that the respondents having not shaken the evidence of the first claimant insofar as the quantum of compensation, the appeal has to be allowed awarding the compensation to the extent of the claim petition.

17. Sri H.G. Ramesh, learned Counsel appearing for the insurance company, on the other hand, submits that the evidence on record, particularly the contents of the FIR, clearly indicates that there was no collision between the lorry and the motor cycle and if the pillion rider of the motor cycle got scared due to the speeding lorry coming on the opposite direction, fell from the motor cycle, it does not constitute cause of action to fasten the liability on the driver-cum-owner of the lorry on the ground of actionable negligence and in turn to rope in the insurance company to cover the claim. Learned Counsel supports the finding of the Tribunal that the accident was not due to the rash and negligent manner of driving of the lorry and submits that this finding does not call for intervention and consequently, the appeal has to be dismissed. Learned Counsel for the insurance company further submits that the compensation amount put forth in the claim application is not supported by acceptable evidence that the claimant was earning an income of not less than Rs. 15,000/- per month and further, that the structured formula as under Schedule II of the Act cannot be made a basis for awarding compensation inasmuch as it has become effective only from 14-11-1994 whereas the accident took place on 2-1-1993. However, learned Counsel also submits that an income of Rs. 1,500/- will be a reasonable amount

if the income has to be assessed.

18. In view of the rival contentions, the points that fall for determination are.--

(1) Whether it can be held that the injuries suffered by the deceased person at the time of the fall from the motor cycle when the accident took place, is attributable to the rash and negligent manner of driving on the part of the driver-cum-owner of the lorry involved in the accident?

(2) Whether the rash and negligent manner of driving of the lorry in itself even without impact by the lorry on the motor cycle, throwing out the pillion rider of the motor cycle on to the road can still constitute actionable negligence giving cause for a claim of compensation by the dependents of the deceased person?

19. On a perusal of the evidence on record, one aspect is very clear that the lorry in question was being driven at great speed and in a negligent manner. It was coming from the opposite side and there was also a curve at the spot of the accident. The evidence on record also indicates that there was an impact between the lorry and the motor cycle, but the dispute is as to whether the pillion rider fell down even before the impact or due to the impact. The question arises as to whether the driver of the lorry, by driving his vehicle which is a very heavy vehicle, on a public road where other vehicles also ply, in a rash and negligent manner and at great speed and causes apprehension or even fear in the mind of the other users of the road giving rise to an accident, can it be termed as "negligence". In this regard, it is useful to refer to Section 279 of the Indian Penal Code which reads as under.--

"279. Rash driving or riding on a public way.--Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both".

20. It is significant to note that u/s 279 of the Indian Penal Code, what constitutes an offence is the rash and negligent manner of use of a motor vehicle on a public way so as to endanger human life or is likely to cause hurt or injury to any other person. It is not a necessary ingredient of this section that hurt or injury should have resulted. The mere fact that a person drives on a public way, in such a manner as to endanger human life, itself is sufficient to constitute an offence under this section. To put it in a positive way, the section imposes a duty on all Indian road users using the vehicle/s on a public way, to ensure that their driving does not cause or result in danger to human life. An obligation is cast on every user of a public way to drive in a careful and reasonable manner.

21. In the instant case, there is no dispute that the lorry was being driven in a rash and negligent manner. A negligent act is one whereby a person using or driving on a public way breaches his obligation to so drive on the public way as to injure other users of the road. A rash driving on the other hand is an

aggravated form and merely not exercising the requisite care and caution. In a rash driving, the person is hasty, throws caution to winds and is an imminent danger to other users of road. The evidence on record indicates that the driver of the lorry was driving not only in a rash and negligent manner, but at great speed. Assuming for arguments sake that the complainant in the FIR had stated that the deceased had slipped from the motor cycle even before the lorry hit the motor cycle, the slip and fall are due to the fact that the motor cycle had to take a sudden turn by swerving to the extreme side of the road and obviously had caused great shock and anxiety to both the rider and pillion rider of the motor cycle. If such sudden and rash oncoming heavy vehicle, namely lorry from the opposite side causes panic and as a result of such panic the pillion rider falls down to the road and is injured, it can definitely be held that the accident is solely and directly attributable to the rash and negligent manner of driving by the driver of the lorry. It is not always necessary that a vehicle should have hit the victim and only as a result of the impact directly with the victim, it should have resulted in injuries or even death. But for the intrusion of the lorry, the rider and the pillion rider of the motor cycle would have proceeded on their journey without any hitch or mishap- Under such circumstances, it cannot be held that the accident is not due to the rash and negligent manner of driving of the lorry. We are of the view that the Tribunal is wrong in coming to such a conclusion. We are of the view that the Tribunal is in error in holding that the victim himself was responsible for the fall from the motor cycle, getting injured and resulting in the death. The fall of the victim is attributable to the rash and negligent manner of driving of the lorry. We are also of the view that such rash and negligent manner of driving amounts to actionable negligence and a claim petition in such a situation is definitely tenable.

22. The trend of fastening liability in cases arising out of motor accident to compensate the victim are not to negative the claim on the ground of mere technicalities or on the ground that the claimants have not been able to positively prove, to hold the negligence on the part of the driver of the motor vehicle causing the accident. In this regard, we may usefully refer to the decision of the Apex Court in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, . The Apex Court, following the principles enunciated in the case of Rylands v. Fletcher, has held that it is not necessary to always prove the rashness and negligence on the part of the driver of a vehicle involved in the motor accident. In a case where the driver was not rash or negligent, but nevertheless the accident occurred due to a mechanical defect or even in an unforeseen event like bursting of a tyre of a vehicle causing accident, the Apex Court, relying upon the principle of vicarious liability enunciated in Rylands case, supra, held that the victim of the accident was entitled for compensation and there was no question of proving negligence on the part of driver of such a vehicle.

23. Now remains the question of determining the compensation amount payable to the claimants. The monthly income of the deceased was claimed to be at a

sum of Rs. 3,000/-. The evidence let in on the part of the claimants in support of this claim has not been seriously challenged by the respondents. Having regard to the fact that the deceased was running a fair-price shop, that he owned considerable extent of agricultural lands and coffee plantation and he had other business activities, it cannot be said that the monthly income of Rs. 3,000/- is either on the higher side or exorbitant. The appellant 1 has in fact had also deposed that her two children are being convent educated and they are incurring an expenditure of Rs. 12,000/- per annum on their education alone.

24. Sri H.G. Ramesh, learned Counsel for the insurance company has submitted that in the absence of concrete evidence to prove the monthly income of the deceased at Rs. 3,000/-, it is reasonable to take the monthly income at a sum of Rs. 1,500/- per month. We are of the view that the income of the deceased person could not have been as low as Rs. 1,500/- per month having regard to the reasonably comfortable situation in which he was placed and having regard to the various activities that he was carrying on as indicated in the evidence of his wife. Taking the monthly income at a sum of Rs. 2,000/- will be definitely not on the higher side and it can safely be assumed to be the monthly income based on which the dependency of the claimants can be worked out.

25. The Apex Court in *S. Kaushanuma Begum's case*, supra, has consciously applied the structure formula basis provided in Second Schedule to the Motor Vehicles Act though in that case the accident had taken place much earlier to the Second Schedule to the Act was brought on the statute book. The Apex Court observed that it was a safer guide to follow the structured formula basis in arriving at the quantum of compensation than by any other method so far as that case was concerned. We are of the view that we will be perfectly justified and safe in following the same basis for the purpose of arriving at the compensation amount in the present case.

26. The age of the victim at the time of the accident was 38 years and as per the Second Schedule to the Motor Vehicles Act, taking the monthly income to be at Rs. 2,000/- per month, the quantum of compensation works out to Rs. 3,60,000/-. Out of this amount, 1/3rd has to be deducted towards personal expenses of the deceased, and 2/3rd could be assessed as loss of dependency, which works out to a sum of Rs. 2,40,000/-. The claimants had also averred that they are put to mental agony and expenses on obsequies. In the evidence of the first appellant, a sum of Rs. 30,000/- had been claimed to be expenses incurred towards funeral expenses and obsequies. We think it is reasonable to award a sum of Rs. 15,000/- towards funeral expenses and obsequies and to award a sum of Rs. 30,000/- towards shock, mental agony, pain and suffering and loss of consortium. A sum of Rs. 1,000/- claimed towards medical expenses is also allowed. All put together, the total compensation works out as follows:

(1)

Towards loss of dependency

Rs. 2,40,000/-

(2)

Towards funeral expenses and obsequies

Rs. 15,000/-

(3)

Towards shock, mental agony, pain and suffering and loss of consortium

Rs. 30,000/-

(4)

Towards medical expenses

Rs. 1,000/-

Total

Rs. 2,86,000/-

27. Thus, Rs. 2,86,000/- is awarded as global compensation. Following the decision of the Apex Court in *S. Kaushnuma Begum's* case, *supra*, the quantum of compensation awarded shall carry interest at 9% per annum from the date of the claim petition till the date of payment.

28. The compensation awarded is to be apportioned to the three claimants in equal proportions. The second respondent-insurance company is directed to deposit the quantum of compensation with interest within a period of six weeks before the Motor Accidents Claims Tribunal, Madikeri. The Tribunal is directed to cause the compensation amount payable to the children to be deposited in a nationalised bank till the children reach the age of 21 years. However, the amount payable to the first claimant/widow of the victim and the interest amount payable in respect of the minor children upto date may be permitted to be withdrawn by the first claimant. Interest portion to be spent for the benefit of the minor children by the mother and natural friend.

29. In the result, the judgment and award of the Tribunal is set aside. The claim petition of the appellants is allowed in the above terms. Appeal allowed accordingly. No order as to costs.