

(2013) 10 KAR CK 0049

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4355 of 2013 (MV)

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Renuka and Others

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2013) 10 KAR CK 0049

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : B.C. Seetharama Rao, for the Appellant; G. Jairaj, for R1 to R6, for the Respondent

Judgement

S. Abdul Nazeer, J.—This appeal by the National Insurance Company is directed against the judgment and award in. MVC No. 2991/2012 dated 13.3.2013 on the file of the Motor Accident Claims Tribunal-V, Court of Small Causes, Bangalore City, whereby the Tribunal has awarded total compensation of Rs. 5,71,500/- with interest at 6% per annum from the date of the petition till the date of deposit. Learned Counsel for the appellant would contend that the driver of the offending lorry is not solely responsible for the accident. The deceased, who was riding the motor bike was also responsible for the accident. Therefore, the Tribunal is not justified in fastening the entire liability on the appellant-Insurance Company. He has taken me through the evidence of the parties and the documents marked in their evidence.

2. On the other hand, learned Counsel appearing for the respondent/claimants has sought to justify the impugned judgment and award.

3. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record. The driver of the offending lorry was examined as R.W. 1. In his evidence, he has stated that the deceased was riding the motor bike on the foot path in a rash and negligent manner and suddenly dashed against the stone and fell down sustaining injuries and the

motor bike was dragged from the foot path due to its high speed and came and hit the lorry. However, the spot sketch at Ex. P2 tells a different story. As per the spot sketch, the motor cycle has touched the lorry on its right side while the deceased was riding it. The complaint at-Ex. P1 shows that lorry has hit the motor bike from behind. This version is supported by the evidence of the claimants. It is to be noticed here that the complaint was lodged against the driver of the offending lorry. After investigation, charge sheet has been filed against him. However, no complaint has been lodged against the rider of the motor bike. On appreciation of the entire materials on record, the Tribunal has held that the driver of the offending lorry is solely responsible for the accident. It is to be noticed here that the road is 40 ft. wide without a divider. In other words, each side of the road is 20 ft. wide with a foot path, which is 5 ft. wide. As per the spot sketch, the accident had occurred 7 ft. away from the foot path. Still 13 ft. width of the road was available for the driver of the offending lorry. Therefore, he ought to have taken proper care while driving the vehicle. The finding of fact recorded by the Tribunal is on appreciation of the materials on record. There is no perversity, illegality or irregularity whatsoever in those findings. The appeal is devoid of merit. It is accordingly dismissed. The amount in deposit shall be transferred to the Tribunal forthwith. No costs.