

(2015) 01 KAR CK 0431

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 20092/2009 (MV) and M.F.A. CROB No. 738/2010

Ningawwa and Others

APPELLANT

Vs

Basanagouda and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 01 KAR CK 0431

Hon'ble Judges : P.D. Waingankar, J.

Bench : Single Bench

Advocate : Anandkumar A. Magddum, for the Appellant

Judgement

P.D. Waingankar, J.—This appeal and cross objection are arising out of the judgment and award dated 16.05.2008 in MVC No. 244/2003 on the file of Prl.Civil Judge (SR.DN.) and CJM, and Member, MACT, Dharwad.

2. The brief facts, which gave rise to the appeal and cross objection, are as under:

"On 14.02.2002 at about 1.00 p.m., the deceased Shiddanagouda Patil was travelling as a pillion rider in a motorcycle bearing registration No. KA-24/#-5608 driven by its rider - respondent No. 4- Mahantesh slowly and carefully on Saundatti-Munavalli road. At that time, a tempo bearing registration No. KA-2640 came from opposite direction and dashed against the motorcycle. As a result, Shiddanagouda Patil the pillion rider sustained grievous injuries and while undergoing treatment in KIMS Hospital, Hubli he succumbed to the injuries. The legal heirs of deceased filed a claim petition under Section 166 of the MV Act against the owner of the motorcycle and the owner and insurer of the Tempo involved in the accident." 3. The claim petition was opposed by the owner of the motorcycle and the insurer of the Tempo.

4. The owner of the motorcycle in his statement of objections has contended that

the accident had occurred purely due to rash and negligent driving of the tempo driver and as such, respondent No. 3 - Insurer is liable to answer the claim. As a result of the said accident, the pillion rider succumbed to the injuries and the rider of the motorcycle sustained grievous injuries. The driver of the Tempo registered a case against the rider of the motor cycle though there was no negligence on the part of the rider of the motorcycle. On the other hand, the insurer of the Tempo in its reply has contended that the accident has occurred purely due to the negligence of the rider of the motorcycle and police upon investigation have filed a charge sheet only against the rider of the motorcycle and hence, the Insurance Company sought for dismissal of the claim petition.

5. The claim petition came up for consideration before the tribunal, before whom, petitioner No. 2-Shekhargouda was examined as PW-1 apart from marking as many as five documents as Exhs-P1 to P5. The rider of the motor cycle Mahatesh Abbai was examined as RW-2. The officer of the Insurance Company was examined as RW-1. Exhs-R1 to R5 were marked. The tribunal upon appreciation of the evidence recorded a finding that the accident occurred purely due to negligence of rider of the motor cycle and thereby awarded a total compensation of Rs. 2,26,000/- to the claimants from the owner and rider of the motor cycle.

6. Aggrieved by the quantum of compensation awarded by the tribunal, the claimants preferred MFA No. 20092/2009, whereas, aggrieved by the total liability fastened only on the owner and rider of the motor cycle, MFA.Crob. No. 738/2010 is preferred by the owner of the motor cycle.

7. I have heard learned counsel appearing for the parties. Perused the papers and judgment and award of the Tribunal.

8. The learned counsel Sri. R.H. Angadi would contend that the accident occurred purely due to the negligence of driver of the tempo that the claimants have attributed total negligence on the part of the driver of the tempo but the tribunal without appreciating the evidence in its proper perspective has wrongly recorded a finding that that the accident occurred purely due to negligence of the rider of the motor cycle.

9. Learned counsel Sri. M.Y. Katagi, appearing for the Insurer of the Tempo would contend that the accident occurred due to total negligence on the part of the rider of the motor cycle and that the police after investigation have also filed charge-sheet against the rider of the motor cycle and the tribunal on proper appreciation of evidence has rightly recorded a finding that the accident was purely due to the negligence of the rider of the motor cycle and therefore no interference is called for.

10. Having heard the submissions made by the learned counsel appearing for the parties and upon perusal of the records and the judgment and award passed by the court below, the following points arise for my consideration:--

"1. Whether the tribunal is justified in recording a finding that the accident

occurred due to the negligence of the rider of the motor cycle?

2. Whether the compensation awarded by the tribunal is just and reasonable?"

11. The claimants in their claim petition have attributed total negligence on the part of the driver of the tempo. But, in connection with the said accident, the case came to be registered against the rider of the motor cycle. On the basis of the complaint lodged by the driver of the tempo, the police after investigation filed charge-sheet only against the rider of the motor cycle, as could be seen from Ex-P1-FIR.

12. Learned counsel appearing for the owner of the motor cycle while taking me through Ex-P2 IMV report, Ex-P3 spot mahazar, by pointing out the place of accident as shown in the spot sketch and the spot panchanama has submitted that it is because of the negligence on the part of the driver of the tempo, the accident has occurred, whereas the counsel for the Insurance Company would submit that on account of rash and negligent riding of the motor cycle, the motor cycle capsized and thereafter went and dashed against the stationary tempo. At this stage, it has to be stated that in the said accident, the pillion rider died, whereas, the rider of the motor cycle was severely injured. It was impossible for the rider of the motor cycle to go to the police station and lodge the complaint. Admittedly, the complaint is lodged by the driver of the tempo. Of-course, the police after investigation have filed charge-sheet against the rider of the motor cycle. Ex-R4 is the copy of the judgment in C.C. No. 319/2002, the criminal case arising out of this accident. It discloses that the rider of the motor cycle has been acquitted after a trial. The rider of the motor cycle has been examined as RW-2, who in turn has deposed that the accident occurred due to negligence of driver of the tempo. The driver of the tempo has not stepped into the witness box so as to give an opportunity to the owner of the motor cycle to cross examine him. Merely because, the police after investigation have filed charge-sheet against the rider of the motorcycle and the case ended in acquittal, it was not proper for the Tribunal to hold the rider of the motorcycle totally negligent. Needless to say the Tribunal has to assess the evidence placed before the tribunal independently. Upon re-appreciation of the evidence both oral and documentary, it appears to me that the rider of the motorcycle and Tempo have contributed towards the accident in the proportion of 80:20. Accordingly, point for consideration is answered.

13. Coming to the determination of the compensation, it is borne out from the judgment and award that the Tribunal has awarded a total compensation of Rs. 2,26,000/- to the claimants. The Tribunal has rightly taken the age of the mother of the deceased as the deceased was a bachelor. The age of the mother was 45 years at the time of accident. The Tribunal has selected "12" multiplier, which is not correct. The appropriate multiplier is "14". The tribunal has rightly taken the income of the deceased at the rate of Rs. 3,000/- p.m. Since he was a bachelor, 1/2 of his income has to be deducted towards living and personal expenses had he been alive. The total loss of dependency" comes to Rs. 2,52,000/- as against

Rs. 2,16,000/- awarded by the tribunal. Further, the tribunal has awarded Rs. 10,000/- under "conventional heads" which is on the lower side. Ends of justice will be met, if an amount of Rs. 25,000/- is awarded under "conventional heads" as against Rs. 10,000/- awarded by the Tribunal. Thus the claimants are entitled for compensation as follows:--

Loss of dependency - Rs. 2,52,000/-

Conventional heads - Rs. 25,000/-"

14. Accordingly, I pass the following order:--

"The appeal and cross-objection are partly-allowed. The judgment and award dated 16.5.2008 in MVC No. 22/2003 stands modified awarding a total compensation of Rs. 2,77,000/- together with 6% interest thereon from the date of petition till the date of realisation. Respondent Nos. 4 and 5-rider and the owner of the motor cycle are directed to satisfy 80% of the award amount and respondent No. 3 National Insurance Company limited is directed to satisfy 20% of the award amount by depositing the same within a period of two months from the date of receipt of copy of this order." 15. The apportionment and release of the amount is as ordered by the tribunal.

Statutory amount deposited in MFA.Crob. No. 738/2010 shall be transmitted to the tribunal.