

(2015) 12 KAR CK 0121

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1257 of 2014 (MV)

Oriental Insurance Company Limited

APPELLANT

Vs

Jayalakshmi and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 12 KAR CK 0121

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : A.M. Venkatesh, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

P.D. Waingankar, J.—This appeal is filed by the appellant-insurer challenging the quantum of compensation and the liability fastened on the insurance company to pay the compensation by common judgment and award dated 7.9.2013 in MVC No. 7006/2011 on the file of XIII Addl. Small Causes Court and Motor Accident Claims Tribunal, Bangalore.

2. The brief facts which gave rise to this appeal are as under:--

"One Nithin P., aged about 25 years, a bachelor was driving his Santro car bearing registration No. KA-04-MF-3770 alongwith his family members from Bangalore towards Mangalore. When the car reached near Agachahalli gate, a KSRTC bus bearing registration No. KA-13-F-1693 came in a rash and negligent manner from opposite direction and dashed against the Santro car. As a result of the impact, all the inmates of the car including deceased Nitin P, who was driving the car suffered severe injuries. While undergoing treatment in Abhaya hospital, Bangalore, the driver of the Santro car-Sri. Nitin. P died. Both his parents filed a claim petition under section 166 of the M.V. Act in MVC No. 7006/2011 before the Motor Accident Claims Tribunal claiming compensation from the owner and insurer of the KSRTC bus which caused the accident. The claim petition was

opposed by the insurance company by denying the negligence attributed to the driver of the KSRTC bus. On the other hand, it was contended that the accident occurred purely due to negligence on the part of deceased-driver of the Santro car. The claim petition came up for consideration before the tribunal, before whom, the first claimant-the mother of the deceased was examined as PW-1 and necessary police documents were marked. The Motor Accident Claims Tribunal upon hearing the arguments and upon appreciation of evidence placed on record, recorded a finding that the accident occurred due to the actionable negligence on the part of driver of the KSRTC bus and thereby taking into consideration the avocation of the deceased, his income and that he was a bachelor, awarded a total compensation of Rs. 33,29,000/- by the impugned judgment and award with 8% interest per annum thereon. Aggrieved by the quantum of compensation as well as liability fastened on the owner and insurer of the KSRTC bus, this appeal is preferred by the insurer of the bus.

We have heard learned counsel appearing for the appellant-insurance company, since the respondents though served have remained unrepresented. Perused the records."

3. The submission of the learned counsel appearing for the appellant -insurance company is that the finding of the tribunal attributing total negligence on the part of KSRTC bus driver is contrary to the evidence on record, that the accident occurred purely due to the negligence of the driver of the Santro car and the tribunal atleast ought to have held that the accident occurred on account of negligence of the deceased-the driver of the Santro car and the driver of the bus. The learned counsel further submitted that the income of the deceased taken by the tribunal is on the higher side, the tribunal has also erred in selecting the multiplier by taking the age of the deceased, instead of taking the age of mother of the deceased. Hence for these reasons, the learned counsel for the insurance company sought to set-aside the award.

4. Having heard the submission of the learned counsel appearing for the insurance company and upon perusal of the entire material placed on record including the judgment and award passed by the court below, the following points would arise for our consideration:--

"1. "Whether the compensation awarded by the tribunal is on the higher side?

2. Whether the finding recorded by the tribunal that the accident occurred due to the negligence on the part of the driver of the KSRTC bus is just and proper?"

Re-Point No. 1:--

The accident and the resultant death of deceased Nitin. P in the accident are not in dispute. So also the relationship of the claimants as parents of the deceased is also not in dispute. The age of the deceased as on the date of the accident was 25 years as he was born on 28.5.1986 is not in dispute. It is the case of the claimants that deceased was working as a Travel Consultant in Travel Solutions

India Limited and drawing a monthly salary of Rs. 21,302/-. Ex-P7 is the salary slip for the month of November 2010, which shows his gross salary was Rs. 21,302/- and the net salary was Rs. 19,508/-. Ex-P8 is the statement of account of the deceased maintained in Axis Bank, where the employer used to credit his salary every month. It discloses for the month of November 2010, a salary of Rs. 19,507.65 was credited to his account, after deducting income-tax from his salary. Therefore, the tribunal has rightly taken his monthly income as Rs. 19,508/-. Further the tribunal has deducted 50% of his salary towards future prospectus in view of the decision of the Supreme Court in Sarla Verma case. The tribunal has rightly applied the multiplier as "18" having regard to the age of the deceased in view of the decision of the Supreme Court in Munlal case and determined "loss of dependency" as Rs. 21,06,000/-. Further the tribunal has awarded a sum of Rs. 50,000/- towards "medical expenses" Rs. 50,000/- towards "loss of love and affection" and Rs. 50,000/- towards "loss of estate" and Rs. 20,000/- towards "funeral expenses" and Rs. 10,53,000/- towards "50% of the future prospectus". Thus the tribunal has determined the total compensation at Rs. 33,29,000/-. On re-appreciation of the evidence, we do not find any reason to call for our interference.

Re-Point No. 2:

It is the case of the claimants that the accident and the resultant death of deceased Nitin. P was on account of rash and negligent driving of KSRTC bus. It is their case that when Nitin P-deceased was driving the Santro car from Bangalore to Mangalore and when the car reached near Agachahalli gate in Belur in Mandya District, the KSRTC bus in question came from opposite direction in rash and negligent manner and dashed against the car. Whereas it the case of the appellant-insurer of the bus that the accident occurred purely due to the negligence of the deceased-the driver of the Santro car. The learned counsel for the appellant-insurance company to substantiate his argument has taken us through the police documents marked as Ex-P1-the FIR and the complaint, Ex-P2 Spot mahazar, Ex-P3 the Motor Vehicle Inspector's report. Ex-P3 the Motor Vehicle Inspector report disclosed the extensive damage caused to the Santro car i.e., the front bumper, front both side indicators, head light, front wheel and assembly, front wheel of both sides, engine bonnet, steering, dash board, front both side doors, front wind screen, battery, AC unit of the Santro car were damaged. So far as, the damage caused to the bus is concerned, it is seen from the report that the front right side shape, front bumper, front right side indicator and head light, front wind screen glass were damaged. From damage caused to the car and the bus, it appears that the accident occurred on account of negligence of the driver of the bus as well as deceased the driver of the Santro car. But, the contribution of the driver of the bus seems to be much more than that of the deceased-the driver of the Santro car. Therefore, taking into consideration the damage caused to both the vehicles as shown in Ex-P3 the Motor Vehicle Inspector's report and the other material on record and upon going through the contents of the spot mahazar and the situation of the spot of

the accident. We hold the negligence on the part of the KSRTC driver and the deceased-the driver of Santro car. We determine the negligence of the driver of the bus and that of the deceased-the driver of the Santro car at 75% and 25% respectively.

While answering point No. 1, we have attributed negligence on the part of the deceased to the extent of 25%, the respondent-claimants are entitled for total compensation of Rs. 24,96,750/- (Rs. 33,29,000/- - Rs. 8,32,250) being 75% of the total compensation of Rs. 33,29,000/- determined.

5. For the foregoing reasons, the appeal filed by the appellant-insurance company is allowed-in-part. The judgment and award dated 7.9.2013 in MVC No. 7006/2011 on the file of MACT and XIII Addl. Small Causes Judge, Bangalore stands modified awarding a total compensation of Rs. 24,96,750/- together with 8% p.a. interest from the date of petition till the date of realization.

The appellant-insurance company shall deposit the compensation amount together with interest at 8% p.a. within three weeks from the date of receipt of copy of the judgment.

The 1st claimant Smt. Jayalakshmi being the mother and the 2nd claimant- Sri. Parameshwara being the father of the deceased are entitled for the compensation at the rate of 60% and 40% respectively.

In the event of deposit, 50% of the compensation out of their respective share with proportionate interest shall be invested in Fixed Deposit for a period of five years in their respective names in any Nationalised Bank of their choice and the remaining 50% of the award amount with proportionate interest shall be released to the respondents-claimants out of their respective shares.

Office to draw award accordingly.