
(2003) 01 KAR CK 0102

In the Karnataka High Court

Case No : M.F.A. No's. 2059, 4137, 4138 and 4139 of 1996

P.S. Somaiah and Another

APPELLANT

Vs

The Director, Bangalore Diary and Others

RESPONDENT

Date of Decision : 01-01-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 128

Citation : (2005) ACJ 1359 : AIR 2003 Kar 258 : (2004) 1 KarLJ 498 : (2003) 3 KCCR 1897

Hon'ble Judges : M.S. Rajendra Prasad, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : N. Ravindranath Kamath, for the Appellant; S.V. Narasimhan and S.P. Shankar, for the Respondent

Judgement

M.F. Saldanha, J.—We have heard the appellants' learned Counsel as also the respondents' learned Counsel in these group of appeals. At the very outset, it is necessary for us to indicate the righteous indignation of this Court with regard to the total and thoroughly illegal practice that is rampant on the roads in the State whereby throwing caution to the winds and with total disregard for the elementary concept of safety, any number of children are indiscriminately loaded on to two wheelers whether it is in front, in the arms or minor children of different ages as a result of which the provisions of Section 128 of the Motor Vehicles Act are breached and disregarded with total callousness. This Court has, times without number brought it to the notice of police and the Traffic Control Authorities that necessary steps be taken to enforce the provisions of Section 128 of the M.V. Act which reads as follows :

"128. Safety measures for drivers and pillion riders--

(1) No driver of a two-wheeled motor-cycle shall come more than one person in addition to himself on the motor-cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor-cycle behind the driver's seat with appropriate safety measures.

(2) in addition to the safety measures mentioned in Sub-section (1), the Central Government may, prescribe other safety measures for the drivers of two-wheeled motor-cycles and pillion riders thereon."

2. What we need to reiterate is that a motorcycle or a motor-scooter or a moped conventionally answering to the description of two wheelers is permitted under the law to carry only two individuals regardless of the age or size of those persons. Secondly, the law postulates that the person other than the driver can only be carried in a position behind the driver and we need to remind the police and the traffic control authorities for the last time that it is totally and completely Impermissible to permit the second person travelling on that vehicle to be in any other position. It has become the order of the day to permit children of different ages, not only very small children but sometimes children who are of the higher age and size, that the driver of the vehicle places the child in front of the driver in a standing or sitting position so much so that at times even the vision of the driver is obstructed. In the ease of vehicles such as scooters some of the major operational devices such as the brake pedal are placed in front of the rider and if the child accidentally steps on it or if the rider is required to operate it suddenly and is obstructed because of the presence of the child, consequences could be very serious. In any event, the law totally prohibits the carriage of children in any position in front of the rider and this is an aspect which will have to be enforced rigorously if there is any concept of consideration for the lives and safety of the children concerned. The entire legislative intent behind incorporating this provision in Section 128 of the Act is directed towards incorporating the safety angle because apart from the aspect of the vision, the stability of the vehicle and the possibility of serious injury to the child are something which the law desires to eliminate. This is the reason why Section 128 of the Act postulates that the second passenger even if it is a child can only travel in a position behind the rider and secondly, that the passenger, irrespective of again of the age is only permitted to travel sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures. Again, what we need to clarify here is that it has become customary on the roads in Karnataka to indulge in high level acrobatics, which would perhaps be more appropriate in a circus, again totally disregarding the basic element of safety consciousness and even if the manufacturer has provided a seat for an additional passenger, more than one person is often accommodated in this area. The Act postulates that only one other individual regardless of the age can occupy this seat and the customary practice of 3 adults or two adults and children or, as has happened in the present case one adult and 3 children and the like, is totally prohibited by law. The result of these breaches is obvious in so far as the stability of the vehicle is seriously affected and secondly, in the unfortunate eventuality of an accident taking place the number of injured or dead persons gets multiplied. In view of the persistent refusal on the part of the police authorities in the State to enforce the law, as far as the enforcement of this rule is concerned, we need to issue a clear warning to the Government that

in the event of injuries and deaths occurring due to the breach of the law, if it is established that it is due to the negligence of the State authorities, that since the claimants would be disqualified from claiming compensation from the Insurance Companies, this Court will be required to consider making the State liable in appropriate cases. It is for this reason that we direct the Registrar General to forward a copy of this Judgment to the Secretary to Government, Home Department, and Transport Department, with specific directions that the observations of this Court and the directions issued be strictly enforced, to start with, by seeing to it that these directions are adequately publicised and given effect to. Secondly, the Insurance Companies shall make it a point that in everyone of the Insurance policies issued in the case of two wheelers that a slip is prominently pasted the insurance policy bringing it to the notice of the insurer that in the event of any accident or any death or injury if the insurer is in breach of the provisions of the law that there will be a disqualification as far as the claiming of the compensation is concerned. It is very necessary that these steps be taken in order to put a full stop to the reckless practice of operating two wheelers in breach of the provisions of Section 128 of the Act.

3. What has happened in the present set of appeals is illustrative of what this Court is referring to. The appellant in MVC.552/ 1990 P.S. Somaiah is an insurance agent and on the date of the incident i.e. 20-9-1989 at about 8 a.m. In the morning he was proceeding from his house on his motor cycle bearing No.CAI.7331 along with his two sons P.S. Muthanna, Kaveriappa @ Karthik and his daughter Namitha to drop them to the School. Bad enough he was riding the motor-cycle with 3 children seated behind him none of whom were very small, their ages being 11, 10 and 8 years respectively. The facts indicate that he was also driving at a relatively high speed and that in the course of the journey the motor-cycle dashed against a Maruti van coming from the opposite direction on Millers Road, again the point of Impact being on the right side of the road and not the left side of the road, though we need to observe that the law with regard to the driving on the left side of the road apparently does not apply to persons operating two wheelers! Here again, in the interests of safety we need to direct the police and the Transport authorities to ensure that rigorous action is taken in respect of any case wherein the obnoxious practice of riding on the wrong side of the road is detected because this is one of the causes in for the most serious of accidents. As a result of the unfortunate impact the rider and the 3 children were thrown off the vehicle. The father Somaiah had over-taken the milk tanker belonging to the Bangalore Dairy which was close behind him and when the children were thrown off the motor-cycle and landed on the road there was hardly enough" time for the driver of the milk tanker to stop the vehicle as a result, which, a horrifying situation occurred whereby the daughter Namita was run over by the tanker and died on the spot. The father Somaiah had also sustained 3 fractures and though he was wearing a helmet because of his injuries he lost consciousness and he and the children were removed to the hospital. The son Karthik was badly injured, he was treated in the hospital for two days and he

also died. It is only the other boy Muthanna who escaped with relatively minor injuries to his legs. It is relevant for us to mention here that in this case the police charge-sheeted the father Somaiah before the Criminal Court for offences punishable under Sections 279, 338, and 304A. IPC and he in turn filed a private complaint against the drivers of the other two vehicles under similar charges. The record does not indicate as to what happened ultimately in this prosecutions but that is not of much consequence as far as the decision of these appeals are concerned.

4. The Tribunal after a careful assessment of the material before it recorded the finding that all the 3 persons viz., the father Somaiah who was riding the motor-cycle, as also the drivers of the Maruti van and the milk tanker were guilty of negligence and that is the reason why the Tribunal has apportioned the compensation awarded in the first of the 3 appeals. Secondly, the Tribunal has recorded the finding that in the facts and circumstances of the present case father Somaiah though, he would be entitled to compensation on the basis of the injuries suffered by him and the damage caused to his motor-cycle that he would be entitled to receive only 40% of the amount quantified on the ground that there has been contributory negligence established on his part. It is for this reason the Tribunal has assessed the level of negligence at 60% as far as Somaiah is concerned, thereby entitling him to only 40% of the quantum of compensation awarded.

5. The appellants' learned Counsel submitted before us that this finding is liable to be set aside because his contention is that the accident was really a freak accident the reason being that the road had been dug up on the side, that this was that caused the Maruti van to swerve out of its path and that the impact between the two wheeler and the van was occasioned because of this diversion and the submission is that consequently Somaiah ought not to be held liable for contributory negligence. The respondents' learned Counsel have countered this submission by pointing out that there is very clear evidence before the Court to establish that Somaiah was driving on the wrong side of the road, the reason for this being that he had overtaken a large vehicle viz., milk tanker, that he had totally disregarded the incoming Maruti van and in the facts and circumstances of the case he was squarely responsible for the impact. What is pointed out to us is that the rules of the road very clearly postulate that before deciding to overtake a vehicle it is very necessary to first ensure that there is a clear passage ahead and that there is no oncoming vehicle and the law also envisages that the vehicle overtaking the other one should be in a position to safely negotiate the act of overtaking and then reoccupy, its position on the left side of the road without causing any undue danger or obstruction either to the vehicle that has been overtaken or to the incoming vehicle. The fact that Somaiah discarded everyone of these principles has been pointed out by the respondents' learned Counsel and we do find that despite everything pointed out by the appellants' learned Counsel to us that it would be difficult on the facts and circumstances of the present case to interfere with the finding of the Tribunal whereby 60%

negligence has been attributed to the rider Of the motorcycle. It is for this reason that as far as MVC.552/1990 is concerned that we refuse to interfere with the order passed by the Tribunal which stands confirmed. We need to observe here that in the light of the legal position as set out by us earlier that had there been a cross appeal on a point of law as far as MVC.552/1990 is concerned, that this Court would have certainly considered interfering with the order passed by the Tribunal. In the absence of any such appeal however we decline to do so.

6. As far as MVC.549/1990 is concerned, this is the case in which the daughter Namitha has lost her life. As indicated by us earlier, she was run over by the tanker and she virtually died on the spot. The postmortem report indicates that the death was due to crushing of the head. The learned member of the Tribunal has taken into account the fact that though she was a student, aged 10 years that the documents produced before the Court indicate that she was a bright student. The learned Judge has awarded an aggregate compensation of Rs. 43000/- under the two heads indicated. In our considered view, having regard to the facts and circumstances of the case, particularly the age and propensities of the deceased that the quantification done by the trial Court will have to be enhanced to a sum of Rs. 1 lakh. However, applying the 40% formula the compensation payable would be reduced to Rs. 40,000/- in this case.

7. Similarly, in MVC.550/1990 where the trial Court has awarded an aggregate compensation of Rs. 51,500/-. In our considered view, the compensation is required to be stepped up to an aggregate of Rs. 1,20,000/- but applying the 40% formula the compensation payable would work out to Rs. 48000/-. As far as MVC.551/90 is concerned, the Tribunal has taken into account the fact that though the injury was not very serious that the treatment period was prolonged, that it involved a certain amount of expenditure and that it has left the son with injuries that could have long term consequences. The correct compensation was assessed at Rs. 19,000/- but we step up this figure to Rs. 50,000/- and applying the 40% formula the claimant would be entitled to Rs. 20,000/- in this case.

8. We need to clarify that as far as MVC.549/1990 is concerned that the Tribunal has held both the Insurance Companies liable to the extent of 15% and 25% respectively. We maintain this ratio and the Tribunal shall, while awarding the compensation ensure that this proposition is maintained. This will be as far as to deposit by the original respondent No. 2 is concerned.

9. In view of the enhancement that has been awarded by us in MVC.549/1990, 5507 1990 and MVC.551/1990 are concerned there will be a corresponding step up in the amounts that the two Insurance Companies will be required to deposit in the Tribunal. The rate of interest that was awarded was 6% and that is increased to 8%. The respective Insurance Companies are directed to deposit the enhanced amount with the Tribunal within an outer limit of 12 weeks from today.

10. The Tribunal to ensure that the whole of the compensation amount payable to the father in relation to MVC.552/1990 is disbursed to him. As far as the other

3 amounts are concerned, they shall be amalgamated and shall be invested in the name of the petitioner in MVC.551/1990 viz., the injured Muthanna along with a nominee of his choice. In our considered view, it would be desirable to invest this amount with the Post Office Savings Bank Account at a place closest to where the applicant is residing so that the amount in question is invested tax-free in the Post Office monthly income scheme. The income accrued which shall go to the SB A/c may be released to the beneficiary. At the end of the period for which the scheme is current, the amount to be released to the beneficiary. With these directions, MFA.2059/1996 to stand dismissed. The remaining 3 MFAs succeed to the extent as indicated by us. No order as to costs.

11. In view of the what has transpired in this case, this Court considers it absolutely incumbent that the directions issued by us with regard to the strict observance of the provisions of Section 128 of the M. V. Act and the allied directions with regard to the enforcement of traffic discipline as far as two wheelers are concerned as also the directions to the Insurance Companies will have to be strictly complied with. The Registrar General, as directed earlier, to forward a copy of this Judgment to the Secretary to the Government, Home Department and the Secretary to the Government, Transport Department, with specific instructions that the directions of this Court should be duly publicised so that they are brought to the public notice and that the Heads of Police and Transport in every District in the State be directed to enforce the directions on a time bound basis and to report compliance to the Registrar General of the High Court within a period of 30 days from the date on which instructions are received.