

(2015) 09 KAR CK 0327

In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 3012 of 2015 and 692 of 2014 (MV)

Renukamma and Others

APPELLANT

Vs

The Managing Director, K.S.R.T.C. and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 09 KAR CK 0327

Hon'ble Judges : N.K. Patil, J;P.S. Dinesh Kumar, J

Bench : Division Bench

Advocate : K. Shantharaj, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J—These two appeals by the claimants and by the Insurer respectively are directed against the same impugned judgment and award dated 19/08/2013, passed in MVC No. 27/2011, by the Senior Civil Judge & JMFC & Member, Motor Accident Claims Tribunal, Arasikere, (for short "Tribunal").

2. The Tribunal by its judgment and award, has awarded a sum of Rs. 5,70,000/- under different heads with interest at 6% per annum from the date of petition till its realization, fixing negligence at 50% on the part of the deceased, rider of the TVS Moped and 50% on the part of the driver of KSRTC bus bearing Reg. No. KA.13.F.1823 and directing the Insurer to indemnify 50% of the award amount as against the claim of the claimants for a sum of Rs. 20/- lakhs on account of the death of Sri. Sundarabhovi.

3. It is the case of the claimants that, the quantum of compensation awarded by the Tribunal is inadequate and it requires to be enhanced and that 50% negligence fixed on the part of the deceased, rider of TVS Moped is not sustainable and is liable to be set aside by fixing entire negligence on the part of the driver of KSRTC bus. Whereas, it is the case of the Insurer that, the Tribunal has grossly erred in not considering the evidence of RW1 and the contents of Ex.

R2 while fixing negligence on the part of the driver of the KSRTC bus and therefore, the direction issued by the Tribunal to the Insurer to indemnify 50% of the award amount cannot be sustained and is liable to be set aside by fixing entire negligence on the part of the deceased, rider of the Moped.

4. In brief, the facts of the case are:

"The claimants are the wife, children and parents of the deceased. On account of the death of the deceased Sri. Sundarabhobi in the road traffic accident, claimants have filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation, contending that, on 21.12.2010 at about 5.30 p.m. deceased was proceeding on his TVS Moped bearing Reg. No. KA.02.EB.1457 towards his village and when he came near Gandipura gate on B.M. Road, at that time, the driver of the KSRTC bus bearing Reg. No. KA.13.F.1823 came from Bangalore side in a rash and negligent manner and dashed against the moped of the deceased. Due to which, deceased sustained grievous injuries and died at the spot."

5. It is the further case of the claimants that, deceased was aged about 40 years, hale and healthy prior to the accident, working as Stone cutter and earning Rs. 20,000/- per month and contributing his entire earnings to the welfare of the family. Due to his untimely death, claimants have suffered loss of dependency, love and affection, apart from mental shock and agony.

6. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence, has allowed the claim petition in part, awarding the compensation of Rs. 5,70,000/- under different heads, fixing negligence in the ratio of 50% each i.e. 50% on the part of the deceased, rider of the TVS Moped and 50% on the part of the driver of KSRTC bus bearing Reg. No. KA.13.F.1823 and directing the insurer to indemnify 50% of the award amount.

7. Being aggrieved by the said judgment and award, the claimants and the Insurer have presented these appeals seeking appropriate reliefs as stated supra.

8. We have heard the learned counsel appearing for the claimants and the learned counsel appearing for Insurer.

9. The submission of learned counsel Sri. Shantharaj K., appearing for claimants is that, the Tribunal has erred in fixing 50% negligence on the part of the deceased, rider of the moped and the same is liable to be set aside. To substantiate the said submission, he has submitted that due to rash and negligent driving by the driver of the KSRTC bus, the said accident had occurred and the Tribunal has not considered the contents of Ex. P2- copy of FIR, Ex. P5- IMV report and Ex. P6-Spot mahazar while fixing contributory negligence at 50% on the part of the deceased, rider of the Moped and has also not considered the evidence of PW2, the eye witness who has stated that the accident had occurred because of the rash and negligent driving by the driver of the bus alone and

there is no fault on the part of the deceased, rider of the Moped. Therefore, he submitted that the impugned judgment and award passed by the Tribunal fixing 50% negligence on the part of the deceased, rider of the Moped is liable to be set aside, fixing entire negligence on the part of the driver of the bus and directing the Insurer of the bus to indemnify the award amount as the said bus was insured with the insurer.

10. Further, learned counsel appearing for claimants submitted that, the Tribunal has erred in not awarding reasonable compensation towards loss of dependency and conventional heads and what is awarded is inadequate and requires to be enhanced reasonably. To substantiate the said submission, he submitted that the claimants are the wife, children and parents of the deceased and on account of the untimely death of the deceased, wife has lost her companion, children are deprived of the love and affection, security and guidance of their father and the parents have suffered lot of mental shock and agony and his death has affected the social and economic condition of the family, as they have lost their earning member. Further, he submits that, the income of the deceased assessed by the Tribunal at Rs. 4,000/- per month is on the lower side and is liable to be enhanced reasonably, on the ground that, deceased was aged about 40 years, working as Stone cutter and earning Rs. 20,000/- per month and the accident is of the year 2010. Therefore, he submitted that, the income of the deceased may be re-assessed atleast at Rs. 15,000/- per month, after deducting 1/4th towards personal and living expenses of the deceased and applying proper multiplier taking the age of the deceased, reasonable compensation may be awarded towards loss of dependency. Further, he submits that the compensation awarded towards conventional heads and the rate of interest is on the lower side and is liable to be enhanced reasonably.

11. Per contra, learned counsel Sri. M. Arun Ponnappa. appearing for the Insurer, inter-alia, submitted that, the Tribunal has erred in fixing negligence at 50% on the part of the driver of KSRTC, on the ground that, the Police after investigation has filed an abated charge sheet exonerating the driver of the bus and therefore, the direction issued to the Insurer to indemnify 50% of the award amount cannot be sustained and is liable to be set aside and that the compensation awarded by the Tribunal is contrary to the oral and documentary evidence available on file. Therefore, he submits that the appeal filed by the Insurer may be allowed by setting aside the direction issued to the Insurer to indemnify 50% of the award amount, by fixing entire negligence on the part of the deceased, rider of the Moped.

12. After hearing the learned counsel for the parties, after going through the grounds urged in the memorandum of appeal by both the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the points that arise for our consideration are:

"(i) Whether the Tribunal has justified in fixing negligence in the ratio of 50%

each i.e. 50% on the part of the deceased, rider of the Moped and 50% on the part of the driver of KSRTC Bus?

(ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?"

Re. Point No. 1:

13. The occurrence of the accident and the death of the deceased are not in dispute. It is the case of the learned counsel appearing for claimants that, the Tribunal has erred in fixing 50% negligence on the part of the deceased, rider of the Moped and the same cannot be sustained and is liable to be set aside. To substantiate the said submission, he has taken us through para-14 of the judgment and vehemently pointed out that, PW2, in unequivocal terms, has deposed that, due to rash and negligent driving by the driver of KSRTC bus the said accident had occurred and therefore, entire negligence has to be fixed on the part of the driver of KSRTC bus. In fact, deceased was riding his Moped slowly and cautiously by following the traffic rules and regulations. Further, he has pointed out on the basis of the contents of Ex. P2-Copy of FIR, Ex. P5-IMV report and Ex. P6-Spot Mahazar that, having regard to the nature of damages caused to both the vehicles, there is negligence on the part of the driver of KSRTC bus and he being the driver of a heavy vehicle, he should have taken precaution to avoid the accident. Therefore, he submitted that, fixing 50% negligence on the part of the deceased, rider of the Moped is not sustainable and is liable to be set aside. But, it is the case of the learned counsel appearing for the Insurer that, the Tribunal has erred in coming to the conclusion that, accident has partly caused on account of the negligence on the part of the driver of KSRTC bus and in fixing 50% negligence on the driver and the same cannot be sustained and is liable to be set aside for the reason that, the Tribunal has failed to appreciate the evidence of RW1 and contents of Ex. R2, the abated chargesheet filed by the police authorities exonerating the driver of the bus and therefore, the finding given by the Tribunal for fixing 50% negligence on the part of the driver of the bus is contrary to the oral and documentary evidence available on record and therefore, it is liable to be set aside. After careful consideration of the submission made by learned counsel appearing for both the parties and after perusal of the reasoning given by the Tribunal in para-14 of its judgment and after re-appreciation of the oral and documentary evidence available on file, it emerges that, the contents of Ex. P5 and Ex. P6 and the nature of damages caused to the vehicles prove beyond all reasonable doubt that, the drivers of both the vehicle have contributed to the accident in the ratio of 50% each. Therefore, the Tribunal has justified in fixing the negligence in the ratio of 50% each on the part of the driver of the bus and on the part of the deceased, rider of the Moped after assigning valid reasons. The reasoning given by the Tribunal is well founded and well considered and therefore, we do not find any error or illegality in the same and interference by this Court is not called for.

Re. Point No. 2:

14. The claimants are the wife, two children and parents of the deceased and they have filed a claim petition under Section 166 of M.V. Act claiming compensation before the Tribunal. It is the case of the claimants that, deceased was aged about 40 years, Stone Cutter by profession, hale and healthy prior to the accident and the only earning member in the family and his family was completely depending on his income. On account of his untimely death, wife has lost her companion, children are deprived of the love and affection, guidance and security of their father and parents have lost their son and suffered mental agony and his death has affected the social and financial condition of the family. The Tribunal, has assessed the income of the deceased at Rs. 4,000/- per month which is on the lower side and is liable to be re-assessed reasonably. It is the case of the claimants that, deceased was earning Rs. 20,000/- per month, but they have not produced any documentary evidence to prove the same. But it is the submission of the learned counsel appearing for the claimants that, the income of the deceased may be re-assessed at Rs. 15,000/- per month. Having regard to the age and occupation of the deceased and the year of accident, we re-assess his income at Rs. 7,000/- per month. Out of which, if 1/4th (Rs. 1,750/-) is deducted towards the personal expenses of the deceased, as rightly done by the Tribunal, his net contribution to the family per month comes to Rs. 5,250/- and by accepting the multiplier of "15" adopted by the Tribunal since the deceased was aged about 40 years as just and proper, we re-determine the loss of dependency at Rs. 9,45,000/- (Rs. 5,250/- x 12 x 15) instead of Rs. 5,40,000/- awarded by the Tribunal and accordingly, it is awarded.

15. Having regard to the facts and circumstances of the case as referred above and in the light of the judgment of the Apex Court and this Court, we award a sum of Rs. 1,00,000/- towards loss of consortium, Rs. 1,25,000/- towards loss of love and affection and the rate of Rs. 25,000/- each to the claimant Nos. 1 to 5, Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses instead of Rs. 30,000/- awarded by the Tribunal. In all, the claimants are entitled to the total compensation of Rs. 12,20,000/- instead of Rs. 5,70,000/- awarded by the Tribunal. Out of Rs. 12,20,000/-, if 50% (Rs. 6,10,000/-) is deducted towards contributory negligence on the part of the deceased, rider of the Moped, the remaining compensation comes to Rs. 6,10,000/-.

16. Regarding rate of interest, as rightly pointed out by the learned counsel appearing for the claimants, 6% interest per annum awarded by the Tribunal is on the lower side, since the accident is of the year 2010. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 8% per annum on the enhanced compensation instead of 6% awarded by the Tribunal.

Thus, there would be an enhancement of Rs. 3,25,000/- (Rs. 6,10,000/- - Rs. 2,85,000/-) with interest at 8% p.a., (excluding interest for the delayed period of 515 days in filing the appeal) from the date of petition till its realization.

17. For the foregoing reasons, the appeal filed by the claimants is allowed in part

and the appeal filed by the Insurer is dismissed as devoid of merits.

The impugned judgment and award dated 19/08/2013, passed in MVC No. 27/2011, by the Senior Civil Judge & JMFC & Member, Motor Accident Claims Tribunal, Arasikere, is hereby modified, by awarding a sum of Rs. 3,25,000/- with interest at 8% p.a., (excluding interest for the delayed period of 515 days in filing the appeal) from the date of petition till its realization, in addition to the compensation awarded by the Tribunal.

The Insurer is directed to deposit the enhanced compensation of Rs. 3,25,000/- with interest at 8% p.a., (excluding interest for the delayed period of 515 days in filing the appeal) from the date of petition till its realization, within three weeks from the date of receipt of the copy of this judgment.

Immediately on such deposit by the Insurer, out of the enhanced compensation of Rs. 3,25,000/-, a sum of Rs. 1,00,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the claimant No. 1, in any Nationalized or Scheduled or Grameena bank, for a period of 10 years and renewable by another 10 years, with liberty reserved to the claimant No. 1 to withdraw the interest accrued on it, periodically.

A sum of Rs. 50,000/- with proportionate interest shall be invested in Fixed Deposit in the names of each of the claimant Nos. 4 and 5, in any Nationalized or Scheduled or Grameena bank, for a period of 05 years and renewable by another 05 years, with liberty reserved to the claimant Nos. 4 and 5 to withdraw the interest accrued on it, periodically.

A sum of Rs. 50,000/- with proportionate interest shall be invested in Fixed Deposit in the name of the claimant No. 2, in any Nationalized or Scheduled or Grameena bank, for a period of 05 years and renewable by another 05 years, with liberty reserved to the claimant No. 2 to withdraw the interest accrued on it, periodically.

Remaining sum of Rs. 75,000/- with proportionate interest shall be released in favour of the claimant Nos. 1, 4 and 5 in equal proportion immediately.

The amount deposited by the Insurer shall be transmitted to the jurisdictional Tribunal forthwith.

Draw the award, accordingly.