

(2017) 01 KAR CK 0171
In the Karnataka High Court
Case No : 21027 of 2011

SRI. SIDRAI MALLAPPA NAIK

APPELLANT

Vs

SHRI. LAXMAN GOPAL PATIL & ORS

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 163A](#), [Section 163A](#), [Section 163A](#) - Special provisions as to payment of compensation on structure

Citation : (2017) 01 KAR CK 0171

Hon'ble Judges : S.Sujatha

Bench : SINGLE BENCH

Advocate : SUNIL S. DESAI, GOULAY ASSOCIATES, S.S. JOSHI, SANJAY S. KATAGERI

Judgement

1. This appeal is directed against the Judgment and Order passed by the Motor Accident Claims Tribunal, Belgaum ["Tribunal", for short], in MVC No.2769/2007.

2. The learned Counsel appearing for the appellant would contend that the claimant was a pillion rider on the scooter bearing No.KA-22/K-1205 and the accident occurred due to the rash and negligent driving of the rider of the motor cycle bearing No.KA-22/R- 7695. The contributory negligence of the driver of the scooter in which the claimant was travelling as a pillion rider was held to the extent of 90% and the contributory negligence of the rider of the Hero Honda motor cycle was fixed at 10% by the Tribunal. Indisputably, the claim petition was filed under Section 163A of the Motor Vehicles Act,1988 ["Act", for short]. As such, the claimant being a pillion rider was a third party to the claim proceedings. It was at the option of the claimant, the claimant was entitled to claim compensation either from the owner/insurer of the two vehicles involved in the accident. This vital aspect was not properly appreciated by the Tribunal while fixing the liability to the extent of 90% on the rider of the scooter bearing No.KA-22/K-1205 and fixing the liability on the respondent No.2/insurer of the

Hero Honda motor cycle bearing No.KA-22/R-7695 only to the extent of 10%. Thus, the learned Counsel submits that the entire liability ought to have been fixed on the respondent No.2/insurer of the Hero Honda motor cycle to satisfy

the Award irrespective of the contributory negligence of the rider of the scooter in which he was travelling as a pillion rider, that too, in the claim petition filed under Section 163A of the Act where two vehicles were involved in the accident.

3. Per contra, learned Counsel appearing for the insurer/respondent No.2 would contend that the policy issued to the insured of the Hero Honda motor cycle was "liability only" policy. No additional premium was paid by the Insured to cover the risk of the pillion rider. In such circumstances, the insurance company was not liable to cover the risk of the pillion rider. It is further contended that there was contributory negligence to the extent of 90% on the part of the rider of the scooter in which the claimant was travelling as a pillion rider and the same being not insured, the claimant is taking undue advantage of the situation of the two vehicles involved in the accident to claim the

entire compensation from the insured/respondent No.2. The Tribunal having extensively analyzed the material evidence on record fixed the contributory negligence to the extent of 10% on the rider of the Hero Honda motor cycle which cannot be found fault with.

4. It was further submitted that the total compensation awarded being Rs.20,000/- and 10% of the same being a meager amount, the same was satisfied by the Insurer/respondent No.2 sans challenging the liability fastened on it. The same cannot be taken as a ground to claim entire compensation. Thus, the learned Counsel seeks for dismissal of the appeal.

5. Heard the learned Counsel for the parties and perused the material on record.

6. It is obvious that the claimant was travelling as a pillion rider in the scooter bearing No.KA-22/K6 1205 which was not insured. The accident in question caused due to the involvement of the two vehicles, namely, KA-22/K-1205 in which the claimant was travelling as a pillion rider and Hero Honda motor cycle bearing No.KA-22/R-7695 which was duly insured with the insurance company/respondent No.2 herein. The Tribunal, after appreciating the evidence on record fixed the contributory negligence to the extent of 90% on the rider of the scooter bearing No. KA-22/K-1205 and 10% on the rider of the Hero Honda duly insured with the respondent No.2 herein. The claim of the appellant is that irrespective of the negligence fixed on the rider of both the vehicles, the claimant is at liberty to claim compensation from any one of the owners/insurer of the vehicles involved in the accident since he is a third party to the accident in question.

7. Section 163A of the Act reads thus:

"163A. Special provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation. For the purposes of this subsection, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under subsection (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner

of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

8. Thus, it is clear that when the accident has been proved, the owner/insurer of both the vehicles are bound to pay compensation in accordance with the structured formula enumerated in II-Schedule to the Act. In the case of "THIMMAIAH vs. THE MANAGING DIRECTOR, KSRTC" in MFA No.3626/2013 [DD-14.7.2015], the Division Bench of this Court while considering the claim under section 163A of the Act placing reliance on the Judgment of the Hon'ble Apex Court in "KHENYEI vs. NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS" reported in 2015 ACJ 1441 and "UNITED INDIA INSURANCE CO. LTD. vs RADHA A. KAMATH" reported in 2011 (4) AIR

KAR.R.292 has held that the claimant can recover the entire compensation from any of the joint tortfeasors. In that case, since owner/insurer of the motor cycle on which the deceased was travelling was not arrayed as respondent, it was held that he was entitled to recover the entire compensation from the respondent/Corporation therein. In the light of the Judgment of RADHA A. KAMATH [supra], the respondent/Corporation was at liberty to recover 50% of the compensation amount so paid from the owner of the motor cycle, the other vehicle involved in the accident in question therein. In the case of KHENYEI [supra], the Hon'ble Apex Court while considering the apportionment of inter se liability in case of composite negligence has held thus: (i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award."

9. In the case of RADHA A. KAMATH [supra], the Division Bench of this Court has held that in case of composite negligence of two vehicles, the owner and insurers of both the vehicles would be liable to pay compensation in much as the claim under Section 163A of the Act is concerned. In the light of the said Judgments, the factual matrix of the case is examined.

10. Indisputably, the claim is made under Section 163A of the Act involving two vehicles in the accident. The Tribunal having held that the question of considering rash and negligent driving does not arise

while considering the claim under Section 163A of the Act, only use of vehicle would the relevant factor to be considered fixed the contributory negligence to the extent of 90% on the rider of the scooter and 10% on the rider of the Hero Honda motor cycle. The liability is fastened to the extent of 10% on the insurer of the Hero Honda motor cycle. As per the Judgment in KHENYEI [supra], it is clear that the claimant is at liberty to claim compensation from both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors being joint and several. However, the claim being under Section 163A of the Act in the present case, the question of apportionment of negligence does not arise under Section 163A of the Act. As per the cases of RADHA A. KAMATH and THIMMAIAH cited supra, the owner/rider of the scooter in which the claimant was traveling shall have to pay 50% compensation and the owner/insurer of the Hero Honda motor cycle has to pay 50% of the compensation

awarded by the Tribunal. Therefore, the order of the Tribunal directing the respondents 1 and 2 to pay only 10% of the total compensation to the claimant jointly and severally is unsustainable.

11. The respondents 1 and 2 are liable to pay at 50% of the awarded amount and respondent No.3 is liable to pay 50% of the awarded amount, with interest. However, the insurer/respondent No.2 shall be liable to pay the total

compensation amount with interest to the claimant and is at liberty to recover 50% of the awarded amount with interest thereon from the registered owner of the scooter bearing No.KA-22/K-1205. It is needless to mention that the quantum of compensation awarded by the tribunal remains undistributed. The appeal stands allowed to the extent indicated above.