

(2015) 07 KAR CK 0307

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 32088 of 2010 (MV)

The Branch Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Iramma Siddayya Chikkamath and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2015) 3 AKR 782

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

Bench : Single Bench

Advocate : Sudarshan M., for the Appellant; Santosh Biradar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.D. Waingankar, J—M.F.A. Nos. 32088/2010, 32092/2010, 32093/2010, 30383/2011, 30384/2011 and 30385/2011 are arising out of the common judgment and award dated 30.04.2010 in MVC Nos. 60/2008, 74/2008 and 75/2008, on the file of the Senior Civil Judge and Member, MACT-IX at Basavanabagewadi. Brief facts which gave rise to these appeals are as under:

"On 16.03.2007, the claimants in the aforesaid claim petitions in MVC Nos. 60/2008, 74/2008, 75/2008 namely Laxmibai, Murragayya Mallayya Vastrad and Mahadevi Murugayya Vastrad were travelling in a NWKSRTC bus No. KA.-25/F-2425 from Nidagundi to Muddebihal. At about 8.30 a.m. when the bus reached Geddadamari Nala, a tempo bearing registration No. KA- 25/A-2871 came from opposite direction in a rash and negligent manner and there was head on collision between the bus and the tempo. As a result, the inmates of the bus and the tempo sustained grievous injuries. They filed claim petitions against the owner of the bus and the owner and insurer of the tempo before the IX MACT, Basavanabagewadi. The claim petitions were contested by them mainly on the aspect of negligence attributed to their respective drivers. The claim petitions came for consideration before the Tribunal. The Tribunal on appreciation of the

evidence, both oral and documentary held that the accident and the resultant injuries sustained by the claimants were on account of rash and negligent driving of the bus and the tempo by respective drivers in equal proportion. Further, the Tribunal upon perusal of the injuries as shown in the wound certificates of the respective claimants and other medical records, awarded a compensation of Rs. 85,270/-, Rs. 82,220/- and Rs. 1,25,610/- with 8% interest thereon in the aforesaid claim petitions respectively."

2. Both the NWKSRTC and Oriental Insurance Company-insurer of the tempo are aggrieved by the finding as to the negligence attributed to their drivers in equal proportion. Therefore, the Insurance Company has preferred M.F.A. Nos. 32088/2010, 32092/2010, 32093/2010 and NWKRTC preferred M.F.A. Nos. 30383/2011, 30384/2011 and 30385/2011.

3. Since all these appeals are arising out of the common judgment and award, they are disposed of by this common judgment.

4. I have heard both the learned counsel appearing for the NWKSRTC and Oriental Insurance Company Limited. Perused the records and the judgment and award passed by the Tribunal.

5. All the claimants not only in their petitions but also in their evidence have attributed the negligence on the part of the driver of both the vehicles namely Siddappa Basavalingappa Chenimar and Basavaraj Gurulingappa Hugar. The complaint in connection with the accident was lodged by one Chandrappa Kowera while he was in Muddebihal Hospital. He was the inmate of the bus. He has clearly stated that the accident occurred on account of negligence of both the drivers. F.I.R. discloses that the driver of the tempo, Basavaraj, is shown as accused No. 1, whereas the driver of the bus, Siddappa, is shown as accused No. 2. Even the charge-sheet was also filed against the driver of both the vehicles for the offences punishable under Sections 279, 337, 338 of IPC in Crime No. 46/2009. On perusal of the spot panchanama also it is clear that the accident occurred in the middle of the road, which is sufficient to hold that both the drivers have equally contributed towards the said accident. The Tribunal upon consideration of the documentary evidence and the oral evidence of all the aforesaid claimants has rightly recorded a finding that the accident and resultant injuries sustained by the claimants were due to rash and negligent driving of the driver of both the vehicles in equal proportion. Strictly speaking, the appeals have been filed as against the finding recorded by the Tribunal on the issue of negligence of the drivers of both the vehicles. So far as compensation awarded to the claimants is concerned, no appeals as such have been filed by the claimants. Since the appeals are filed by the NWKSRTC and Insurance Company, I have also perused the compensation awarded by the Tribunal in respect of each and every claimants with reference to the nature of injuries suffered by them, nature of treatment, period of hospitalisation, their avocation, income and the disability said to have been suffered by them. The compensation awarded by the Tribunal in fact appears to be on the lower side under all the heads. Since the claimants

have not preferred appeals, it is not open to this Court to enhance the compensation awarded. It suffices to say that the compensations awarded by the Tribunal in all the claim petitions also do not call for my interference. All the appeals are devoid of merits. Hence, I pass the following.

ORDER

M.F.A. Nos. 32088/2010, 32092/2010, 32093/2010 filed by the Oriental Insurance Company Ltd., and M.F.A. Nos. 30383/2011, 30384/2011, 30385/2011 filed by NWKSRTC are dismissed.

The amount in deposit in all the appeals shall be transmitted to the Tribunal.