

(2016) 02 KAR CK 0346

In the Karnataka High Court

Case No : M.F.A. Nos. 31689, 31963 and 31755/2012 (MV)

The Branch Manager, Shriram General Ins. Co. Ltd.

APPELLANT

Vs

Eshwar H.D. and Others

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 117, Section 122, Section 126, Section 166

Citation : (2016) 02 KAR CK 0346

Hon'ble Judges : Ram Mohan Reddy and Aravind Kumar, JJ.

Bench : Division Bench

Advocate : Bhadrashetty Sangeetha C., Advocate, for the Appellant; Arunkumar, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Ram Mohan Reddy, J.—1. Since common questions of law and that of fact arise for decision making, with the consent of the learned counsel for the parties, appeals are clubbed together, finally heard and disposed off by this order.

2. These appeals arise out of the common Judgment and award dated 26.08.2010 of the Motor Accident Claims Tribunal and Fast Track Court-I, Raichur (for short MACT) insofar as it relates to MVC 355/2009 (MFA 31689/2012); MVC 356/2009 (MFA 31755/2012); MVC 357/2009 (MFA 31963/2012).

3. In all the appeals preferred by the insurer of the motor vehicle bearing registration No. KA-31/5390 being a lorry belonging to 5th respondent has called in question the finding in the affirmative over issue of negligence of the driver of motor vehicle insured by the appellant, as also the determination of compensation in each of the claim petitions.

4. Facts briefly stated are:

"On 29.04.2009 at about 1.00 AM, Vasanthamala @ Sangamma, W/o Eswar, S/o Durgappa Nayak and mother of Shivakiran, Karthi Kumar claimants in MVC

355/2009 and Kaarthik Kumar, the claimant in MVC 356/2009, while travelling in the Maruthi Car bearing registration No. KA-25/M-4095 belonging to the first claimant in MVC 355/2009 as also in MVC 357/2009, duly insured, intending to go to Hubli, having noticed a parked lorry bearing registration No. KA-25/B-9181 belonging to the 7th respondent and insured by the 8th respondent Reliance General Insurance company, stopped the car right behind the said lorry, whence, it is alleged that the lorry bearing registration No. KA-31/5390 belonging to 5th respondent and insured by appellant coming from behind the car dashed against the car resulting in injuries to the driver of the car i.e. the husband of the deceased, and other occupants while Vasanthamala succumbed to grievous injuries. The driver of the lorry bearing registration No. KA-31/5390, insured by the appellant was prosecuted for rash and negligent driving in Crime No. 42/2009 of Kukanoor Police Station."

5. Claimants in MVC No. 355/2009 being none other than the widower and two sons of deceased Vasanthamala, filed claim petitions invoking section 166 of the Motor Vehicles Act, 1988 for compensation, arraigning respondents 4 to 8 as party/respondents.

6. Claim Petitions were opposed by filing statement of objections of respondent No. 4, arraigned as respondent No. 1, appellant arraigned as respondent No. 3, and respondent No. 8 arraigned as respondent No. 6, while respondent No. 5 adopted the written statement of respondent No. 4. Respondent No. 6 Mallappa, arraigned as respondent No. 4 since not served the claim petitions were dismissed, while respondent No. 7 arraigned as respondent No. 5, the owner of the lorry bearing registration No. KA-25/B-9181 though served remained absent and was unrepresented.

7. In the written statement filed by the owner of the lorry bearing registration No. KA-31/5390, it was asserted there was a doubt in the claim petition about time of accident as it is shown as 3.50 a.m. on 29.04.2009 whereas in the complaint it is mentioned as 1 a.m., while denying the allegations of rash and negligent driving of the lorry. According to the said respondent the accident occurred due to the driver of Maruti car who stopped the car on the road without parking signal and contributed to the negligence. Other allegations and averments were denied.

8. In the written statement filed by appellant, arraigning as 3rd respondent, it was contended that petition was frivolous, vexatious and that it was bad for non joinder of necessary parties while alleging negligence on the driver of the maruti car in which the deceased was travelling as also the parked lorry bearing No. KA-25/B-9181 and that claimants are negligent having contributed 50% negligence in addition to plea of composite negligence in view of involvement of three motor vehicles.

9. Respondent No. 8, insurance company in its statement of objections, resisting the petition amongst other grounds, advancing a plea that the accident took

place due to the rash and negligent driving of lorry bearing No. KA-31/5390 and not the lorry parked in front of the Maruti Car. It was asserted that the maruti car was parked behind the lorry when the driver of the offending lorry bearing No. KA-31/5390 came from the back side of the car, at a high speed and dashed against maruti car causing the accident, and that the maruti car did not come in contact with the parked lorry bearing No. KA-25/B-9181. Lastly it was contended that the lorry parked in front of the maruti car was with signal and indication while maruti car was without signal or indication over its parking and therefore negligence is on the part of the driver of the truck/lorry which dashed against motor vehicle as also the driver of the maruti car.

10. In the premises of pleadings of parties MACT framed following issues:

MVC 355/2009:

"1. Whether the claimants prove their relationship with the deceased Vasanthamala @ Sangamma W/o Eashwar H.D. as pleaded in the petition?

2. Whether the claimants prove that on 29.04.2009 at about 1.00 A.M. on Gadag-Koppal NH-3 road opposite to Bhanapur Cross IB., due to rash and negligent driving of lorry bearing registration No. KA-31/5390 by respondent No. 1, Vasanthmala @ Sangamma died?

3. Whether the claimants are entitled for compensation? If so, what amount and from whom?

4. What order or award?"

MVC 356/2009:

"1. Whether the claimants prove that on 29.04.2009 at about 1.00 A.M on Gadag-Koppal NH-3 road opposite to Bhanapur Cross IB., due to rash and negligent driving of lorry bearing registration No. KA-31/5390 by respondent No. 1, the claimant sustained injuries?

2. Whether the claimant is entitled for compensation? If so, what amount and from whom?

3. What order?"

MVC 357/2009:

"1. Whether the claimants prove that on 29.04.2009 at about 1.00 A.M on Gadag-Koppal NH-3 road opposite to Bhanapur Cross IB., due to rash and negligent driving of lorry bearing registration No. KA-31/5390 by respondent No. 1, the vehicle of the claimant got completely damaged?

2. Whether the claimant is entitled for compensation? If so, what amount and from whom?

3. What order or award?"

11. The MACT clubbed the claims for common trial. The first claimant in MVC 355/2009, the husband of the deceased was examined as PW-1 and claimant Karthik Kumar in MVC 356/2009 was examined as PW-2 and marked 18 documents as Exhibits P-1 to P-18, while for the respondents, the driver of the lorry insured by appellant was examined as RW-1 and 5 documents were marked as Exhibits R-1 to R-5.

12. The MACT having regard to the material on record and evidence both oral and documentary observed that there was nothing to show negligence on the part of the Maruti car and the lorry that was parked by the side of the road, to conclude that the accident occurred due to the rash and negligent driving of the lorry bearing Reg. No. KA-31/5390 and answered the said issue in the affirmative. As regards quantum of compensation, the MACT observed that the deceased Vasanthmala was employed as a Senior Manager in Prajavani Printing Press, Daily Newspaper, Gulbarga and earned Rs. 21,708/- per month and was aged 47 on the date of accident and death and to the annual income applied multiplier "13" and deducting 1/3rd towards personal expenses of the deceased, awarded Rs. 22,57,632/- towards loss to estate; to which was added, Rs. 10,000/- towards loss of expectancy; Rs. 10,000/- towards loss of consortium; Rs. 10,000/- towards funeral expenses, totaling to Rs. 31,70,000/- with interest at 6% per annum. In so far as MVC No. 356/2009, the claimant injured it was held was entitled to Rs. 58,132/- and the injured claimant in MVC No. 357/2009, the driver of the Maruti Vehicle and the husband of the deceased Vasanthmala, was entitled to Rs. 34,470/- with interest at 6% per annum.

13. The first submission of the learned counsel for the appellant - insurer of the lorry bearing Reg. No. KA-31/5390 is that the lorry and the Maruti car which were parked on the left side of the road, did not switched on the parking lights or indicators. The negligence on the part of the drivers of both the lorry and the Maruti car contributed to the accident. According to learned counsel, if there was any indication by way of switching on the parking lights, the accident could have been avoided, more so since the accident occurred at 1.00 AM while it was pitch dark.

14. Learned counsel for the 8th respondent - the insurer of the parked lorry bearing Reg. No. KA-25/B-9181 and the learned counsel for owner of the Maruti car seek to sustain the judgment and award impugned as being well merited, fully justified and not calling for interference.

15. An examination of the police records namely the FIR Ex. P1 and the spot panchanama Ex. P4 spells out in detail the factual matrix, as stated by the complainant Naveen Kumar S/o Udaya Kumar one of the occupants of the Maruti car that the driver of the Maruti car while proceeding to Hubli having noticed the parked lorry bearing Reg. No. KA-25/B-9181 insured by the 8th respondent, on the left side of the road, without switching on the parking lights or indication, brought the car to halt behind the said lorry and in the meanwhile the offending lorry bearing Reg. No. KA-31/5390 insured by the appellant, driven in a rash and

negligent manner dashed on the hind side of the Maruti car which in turn dashed against the parked lorry, resulting in grievous injury to Vasanthamala occupant in the front seat of the car, who succumbs to the injuries. This statement is made at an undisputed point of time, the earliest statement in the investigation by the police records. The spot panchanama Ex. P4 is not seriously contested by the parties.

16. The oral testimony of RW-1 the driver of the offending vehicle bearing Reg. No. KA-31/5390 testifies that while driving the lorry cautiously, did not notice the vehicles parked ahead on the left side of the road since there was no indication and the parking lights were not switched on and being in the dead of the night at 1.00 AM, despite due diligence, though did his best to avoid the accident, nevertheless was unable to do so. In the cross-examination of RW-1, very strangely, respondent No. 8 - insurer of the parked lorry, suggested that the Maruti car parked on the left side of the road, when sought to be driven on to the road without indications and lights, at which point of time, the lorry coming from behind i.e. KA-31/5390 dashed against the Maruti car. This suggestion is admitted by RW-1.

17. We have therefore on record the statement of the occupant of the car by name Naveen Kumar as recorded in Ex. P4 spot panchanama and the evidence of RW-1, who apparently made vacillatory statements in one breath to say that the Maruti car was parked behind the lorry without switching on the parking lights or indication, the cause of the accident and in another breath admits a suggestion by the insurer of the parked lorry that the Maruti car came out of the left side of the road to the main road without indications and lights at 1.00 AM in the dead of the night when the accident occurred. The testimony of RW-1 being vacillatory is not dependable.

18. If regard is had to Ex. P4 the spot panchanama, then it would remain as a fact that the lorry bearing Reg. No. KA-25/B-9181 insured by the 8th respondent was parked on the left side of the road without indication either by switching on the parking lights or signal lights and the Maruti car driven by the first claimant in MVC No. 355/2009 having noticed the parked lorry brought to halt the Maruti car right behind the parked lorry at which time the lorry insured by the appellant coming from behind the Maruti car dashed against the said car. This, in our opinion, is probable and acceptable. It is also to be noticed that the complaint in FIR Ex. P5 alleges the rash and negligent driving of the lorry insured by the appellant as the cause of the accident.

19. Section 117 of the Motor Vehicles Act, 1988 provides for parking places and halting stations whereunder the State Government or the authority authorized may determine places at which motor vehicles may stand either indefinitely or for the specified period of time, and may determine the places where public service vehicles may stop for a longer time than is necessary for taking up and setting down of passengers. Section 122 of the said Act is a statutory obligation on the person in charge of the motor vehicle not to cause or allow the vehicle or

any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers. Section 126 of the said Act provides for stationery vehicles, yet another obligation on the driver of motor vehicle not to cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver. Rule 109 of the Central Motor Vehicles Rules, 1989 provides for parking lights and states thus:

"The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road."

20. If regard is had to the statutory provisions, it makes it abundantly clear that the driver of the motor vehicle on a public street will have to with circumspection, caution and due diligence park the vehicle in such a manner that there is indication of such parking by switching on the parking lights, or hazard lights, more so when it is in the dead of the night and in particular on a public street.

21. Apparently, the lorry bearing Reg. No. KA-25/B-9181 parked on the left side of the road, a public street, a national highway, and not a designated place of parking, without indication by switching on the parking lights contrary to the statutory provisions, contributed to the accident. The driver of the Maruti car none other than the claimant in MVC No. 355/2009 having noticed the said unauthorized parking of the lorry without signal or indication brought to halt the Maruti car right behind the lorry, at about 1.00 AM, when the lorry bearing Reg. No. KA-31/5390 insured by the appellant driven in a rash and negligent manner not noticing the parking of the Maruti car dashed into it from behind and caused the damage.

22. In the facts and circumstances, we are constrained to hold contributory negligence on the part of the driver of the parked lorry, insured by the 8th respondent as also the driver of the lorry insured by the appellant in equal proportion, in other words, the driver of the stationary lorry and the driver of the lorry which came from behind and dashed against the Maruti car are equally negligent to an extent of 50:50. In that view of the matter, the MACT was not justified in returning a finding on the said issue attributing negligence on the driver of the lorry insured by the appellant alone.

23. Learned counsel for the appellant submits that the appellant does not seriously question the award of compensation in MVC Nos. 357/2009 and 356/2009 in respect of injuries sustained by the claimants therein.

24. As regards the determination of Rs. 22,57,632/- as compensation towards loss to estate due to death of Vasanthmala, is seriously opposed by asserting

that the deduction to be effected was 2/3rd of the income of the deceased Vasanthmala since her husband the first claimant in MVC No. 355/2009 was an earning member holding the same post and designation under the very same employer as that of the deceased and that the two other claimants were major sons of the deceased and the first claimant in MVC No. 355/2009.

25. Learned counsel for the claimants in MVC No. 355/2009 seeks to support the finding as being well merited, fully justified and not calling for interference. According to the learned counsel if regard is had to the decision of the Division Bench of this Court in A. Manavalagan v. A. Krishnamurthy and others , 2005 ACJ 992 more appropriately, to paragraph No. 20(iv) and the note thereto, claimants are entitled to compensation both under the heads of loss to estate and loss of dependency, since the deceased and her husband were living together under a common roof sharing expenses and the MACT having deducted 1/3rd towards the personal expenses of the deceased, nevertheless the quantum of compensation if put together under the two heads of loss to estate and loss of dependency after adding future prospects to the income of the deceased, does not call for interference.

26. We find force in the submission of the learned counsel for the claimants. In Manavalagart's case paragraph No. 20(iv) and the note thereto the division bench observed that when a husband and wife, with separate incomes are living together and sharing their expenses, their joint living expenses are less than twice the expenses of each one living separately, then each, by the fact of sharing, is conferring the benefit on the other, resulting in higher savings, say, 1/3rd of the income. In addition it was held each spouse loses the benefit of service by the other in managing the household, and therefore entitled to compensation under the head of loss of dependency and loss to estate.

27. Applying the said principles, and reckoning Rs. 21,708/- as the monthly income of the deceased, as disclosed in Ex. P7 the salary certificate and adding 30% being Rs. 6,512/- to the said income, towards future prospects, since the deceased was in a regular employment, the loss of monthly income is Rs. 28,220/-. If 1/3rd of the said income is taken as the savings, the amount is Rs. 9,408/- and to the annual savings applying multiplier "13" as applicable to age 47 of the deceased, loss to estate is Rs. 14,67,648/-.

28. The services rendered by the deceased wife to the husband in the circumstances could be Rs. 5,000/-, and to the annual loss of income towards services if multiplier "13" is applied, then compensation towards loss of dependency is Rs. 7,80,000/-.

29. The total of loss to estate and loss of dependency is Rs. 22,47,648/-, the MACT awarded Rs. 22,57,632/-. We think it appropriate not to interfere with the award of compensation of Rs. 22,57,632/-

30. In the result, the appeals are allowed in part, the common judgment and award is modified returning a finding on issue of negligence by attributing

contributory negligence on both the drivers of the offending lorries in the ratio of 50:50 i.e. the lorry insured by the appellant bearing certificate of Reg. No. KA-31/5390 and the lorry insured by the 8th respondent bearing certificate of Reg. No. KA-25/B-9181 and in all other respects remains unaltered.

The amount in deposit is directed to be transmitted to the MACT, who, if after proper calculation, finds any excess amount in deposit, is directed to refund the same to the appellant.