**(2013) 12 KAR CK 0026**

**In the Karnataka High Court**

**Case No :** M.F.A. No. 31771 of 2010 (MV) along with Miscellaneous Cvl. No. 151776 of 2011 connected with M.F.A. C.R.O.B. No. 1026 of 2011

The Branch Manager United India Insurance Co. Ltd. APPELLANT

Vs

Jayashree, Mayur, M.S. Pattar and The Divisional Controller NWKRTC <BR> Jayashree and Mayur Vs M.S. Pattar, The Branch Manager The United India Insurance Co. Ltd. and The Divisional Controller NWKRTC RESPONDENT

**Date of Decision :** 06-12-2013

**Acts Referred:**

**Citation :** (2013) 12 KAR CK 0026

**Hon'ble Judges :** Ram Mohan Reddy, J;K.N. Keshavanarayana, J

**Bench :** Division Bench

**Advocate :** Shivanand Patil in MFA No. 31771/2010 assisted with Misc. Cvl. No. 151776/2011 and Sri Sajjanshetty in MFA. CROB No. 1026/2011, for the Appellant; Sajjanshetty, Advocate for R1 and R2; Sri D.P. Ambekar, Advocate for R3, Smt. Umadevi S. Babshetty, Advocate for R4 in MFA No. 31771/2010 A/w Misc. Cvl. No. 151776/2011 and Sri D.P. Ambekar, Advocate for R1, Sri Shivanand Patil, Advocate for R2, Smt. Umadevi S. Babshetty, Advocate for R3 in MFA. CROB No. 1026/2011, for the Respondent

## Judgement

K.N. Keshavanarayana, J.—This appeal by the insurer is directed against the judgment and award dated 20.05.2010 passed by MACT-VI, Bijapur, in MVC No. 309/2007. At about 11.00 a.m. on 12.10.2006 an accident ensued on account of collision between Tata Sumo bearing registration No. KA-28/M-3057 and bus belonging to NWKRTC bearing registration No. KA-28/F-1092. In the said accident, one Vijayamahantesh, an inmate of the Tata Sumo as well as the driver of the Tata Sumo died. The accident occurred near Biraladinni village on NH-13. In respect of this accident, the jurisdictional Police registered a criminal case against the driver of the Tata Sumo and finally filed a report before the jurisdictional Court to that effect. In respect of death of Vijayamahantesh, his wife and son filed claim petition u/s 166 of the Motor Vehicles Act seeking compensation of Rs. 32,44,610/- under various heads. The claim petition was filed against the owner and insurer of the Tata Sumo as well as the Divisional Controller of NWKRTC (for short ''Corporation''). The claimants inter alia contended that the accident was solely due to the negligence of the driver of the Tata Sumo; that the deceased was working as Special Land Acquisition Officer for Railway Project at Sindhanoor and was earning monthly salary of Rs. 14,742/- and he was the only bread earner of the family. Nevertheless, Corporation was also made a party.

2. The claim petition was contested by the owner and insurer of the Tata Sumo as well as by the Corporation. Owner of the Tata Sumo though denied all the allegations made by the claimants with regard to the accident, nevertheless, contended that the vehicle was validly insured with the United India Insurance Company Limited and that policy was in force as on the date of the accident and therefore, he is entitled to be indemnified by the insurer. The insurer of the Tata Sumo contended that the accident was solely due to the negligence of the driver of the bus and that there was no negligence on the part of the driver of the Tata Sumo. Alternatively contended that the accident was on account of the negligence of the driver of both the vehicles thereby, therefore, accident was due to the composite negligence, as such, compensation payable if any to the claimants will have to be apportioned among the insurer of the Tata Sumo and the Corporation. However, the insurer admitted issuance policy in respect of Tata Sumo and its validity as on the date of the accident. It also contended that the compensation claimed is highly excessive and exorbitant. The Corporation in its objection though reiterated the petition averments that the accident was due to the negligence of the driver of the Tata Sumo, contended that there was no negligence on the part of its driver as such even on the basis of the very averments made in the petition, Corporation is not a necessary party to the claim petition. The Corporation also filed an additional written statement before the Tribunal contending that even as per the Police record, there was no negligence on the part of the driver of the bus and that the negligence was only on the part of the Tata Sumo. Therefore, it sought for dismissal of the claim petition as against the Corporation.

3. In the light of the pleadings of the parties, the Tribunal framed the following issues:

1) Whether the petitioners prove that on 12.10.2006 at about 11.00 a.m. on NH-13 road, near Beeraladinni cross, the road traffic accident took place due to the actionable negligence of the driver of the vehicle i.e., Tata Sumo bearing registration No. KA-28/M.3057 and bus bearing its registration No. KA-28/F.1092, by which deceased Vijayamahantesh Kerimath succumbed to the injuries?

2) Whether the respondent Nos. 1 and 2 prove that, above said accident took place only due to actionable negligence of driver of Bus bearing its registration No. KA-28/F.1092?

3) Whether the respondent No. 3 proves that said accident took place only due

 

to the actionable negligence of driver of Tata Sumo No. KA-28/M.3057?

4) Whether the petitioners are entitled for compensation? If so, how much and from whom?

5) What order or award?

4. On behalf of the claimants, first claimant examined herself as P.W. 1. She examined two witnesses as P.Ws.2 and 3 in respect of service of the deceased as well as the monthly salary drawn by him. She also examined one Kallappa S/o. Basappa Ilageri, Beeraladinni, who is stated to be an eyewitness, as P.W. 4. The claimants relied on documentary evidence marked as Exs. P1 to P13.

5. Per contra, respondent No. 1, owner of the Tata Sumo examined himself as R.W. 1. The driver of the Corporation bus was examined as R.W. 2. A copy of the insurance policy came to be marked as Ex. R1.

6. The Tribunal on assessment of the oral and documentary evidence, by the judgment under appeal, answered issue No. 1 framed regarding actionable negligence in the affirmative holding that the accident was solely due to the negligence of the driver of the Tata Sumo and therefore, owner and insurer of the Tata Sumo are jointly and severally liable to satisfy the award.

7. The Tribunal for the purpose of determining loss of dependency, reckoned net salary of the deceased at Rs. 13,550/- as reflected in the salary certificate Ex. P5 issued for the month of September 2006, from this it deducted 1/3rd towards personal and living expenses of the deceased and by applying multiplier of 11 referable to the age of the deceased, quantified the loss of dependency at Rs. 11,92,360/-. To this the Tribunal added Rs. 10,000/- under the loss to estate, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of consortium and thus the Tribunal in all awarded compensation of Rs. 12,17,360/-. The Tribunal directed the owner and insurer of the Tata Sumo jointly to pay the entire compensation with interest at 6% per annum from the date of petition till the date of payment. Claim petition as against the Corporation came to be dismissed.

8. Aggrieved by the said judgment and award, the insurer has presented this appeal. Upon service of notice of this appeal, claimants have filed cross objection seeking enhancement of compensation.

9. In the appeal, the insurer has questioned the finding of the Tribunal on the issue regarding actionable negligence contending that the Tribunal has committed serious error in holding that the accident was solely due to the negligence on the part of the driver of the Tata Sumo. On the other hand, the Tribunal ought to have held that the accident was due to the negligence of the driver of the bus and not the driver of the Tata Sumo. Alternatively, it is contended that the Tribunal ought to have held that there was composite negligence on the part of drivers of both the vehicles and on that basis ought to have apportioned the compensation to be payable by the owner and insurer of the Tata Sumo, and by the Corporation. The insurer has also contended that the

Tribunal having regard to the fact that the deceased had hardly about 4 to 5 years of service left as on the date of the accident and death, could not have applied entire multiplicand for whole of the multiplier period. In other words, according to the insurer, the Tribunal ought to have applied split multiplier method as held by the Division Bench of this Court in Union of India and others Vs. K.S. Lakshmi Kumar and Others, .

10. Claimants have sought for enhancement of compensation by contending that the Tribunal has taken net salary of the deceased as reflected in Ex. P5, though the claimants have produced Exs. P8 and P9 the last pay drawn certificate by the deceased, which reflected higher gross salary drawn by the deceased. They have further contended that the Tribunal ought to have taken gross salary as reflected in Exs. P8 and P9 and only deduction permissible was payment towards professional tax and on that basis, loss of dependency ought to have been computed.

11. In the facts and circumstances of the case the points that arise for our consideration are:

1) Whether the findings recorded by the Tribunal on the issue regarding actionable negligence suffers from any perversity or illegality warranting interference by this Court?

2) Whether there was any negligence on the part of the driver of the bus in question?

3) Whether the Tribunal is justified in law in adopting multiplicand determined for the whole of the multiplier period of 11, regard being had to the fact that deceased was aged about 55 years, therefore, had only five years of service as on the date of the accident and death?

4) Whether the claimants are entitled to enhancement of compensation, if so, to what extent?

12. We have heard the learned counsel for the appellant as well as the respondents/claimants.

Re.: Point Nos. 1 and 2:

13. The Tribunal after referring to the oral evidence of P.W. 4 who is stated to be an eye witness, has held that P.W. 4 cannot be believed as an eyewitness in the light of the answer elicited from him during the cross-examination that he did not see two vehicles involved in the accident before the occurrence of the accident and that he has not deposed before the Criminal Court as a witness. Learned counsel for the appellant-insurer contended that the method adopted by the learned Member of the Tribunal in considering one sentence in the evidence of P.W. 4 is improper and that the Tribunal ought to have considered the whole of the evidence of P.W. 4, which according to the learned counsel establishes that the accident was due to the negligence of the bus driver or atleast it would

indicate that there was contributory negligence on the part of the driver of both the vehicles since there was head on collision.

14. In the light of this submission, we have perused the record secured from the Tribunal and also reasonings adopted by the learned Member of the Tribunal. Of-course, reading of the judgment under appeal indicates that the learned Member of the Tribunal referring to one answer elicited in the cross-examination has held that P.W. 4 cannot be termed as an eyewitness. However, the Tribunal has concluded that the accident was due to the negligence of the driver of that Tata Sumo only.

15. P.W. 1- first claimant is not an eyewitness to the accident. Therefore, her evidence is of no assistance in deciding this issue. P.W. 4 in examination-in-chief filed in the form of affidavit has stated on oath that at about 11.00 a.m. on 12.10.2006, he was passing near Biraladinni village to go to his land and at that time, he saw NWKRTC bus bearing registration No. KA-28/F-1092 coming from Bijapur in a rash and negligent manner and dashed to the Tata Sumo vehicle which was going slowly and then he rushed to the spot and saw that due to the accident driver of the Tata Sumo has sustained injuries and another person also had sustained injuries. This evidence of P.W. 4 was contrary to the very specific case pleaded by the claimants in the claim petition. As noticed supra, claimants had contended that the accident was due to the negligence of the driver of the Tata Sumo. It is in the light of this examination-in-chief of P.W. 4, he was not seriously cross-examined by the insurer of the Tata Sumo. However, he was cross-examined on behalf of Corporation wherein it is elicited from him that the accident occurred on NH-13 which was running from north to south. The cross-examination further reveals that he was going on the right side of the road towards Bijapur. It is further elicited from him that he did not see vehicles immediately prior to the accident. He has denied further suggestion that there was no negligence on the part of the bus driver, on the other hand, Tata Sumo driver came on to the wrong side and dashed against the bus. However, he admitted the suggestion that the accident occurred on the eastern edge of the road running north to south. It is also clear from the evidence on record that the bus was proceeding from north to south i.e., from Bijapur towards Almatti, while Tata Sumo was moving from south towards north i.e., from Almatti side to the Bijapur. If the evidence of P.W. 4 is considered with reference to the contents of the spot mahazar Ex. P3 drawn by the police during the investigation, it clearly establishes that the Tata Sumo which was moving from south to north instead of moving along the western side of the road has gone to eastern side of the road i.e., to the wrong side and collided with the bus. Ex. P3 was drawn on 12.10.2006 i.e., on the very day of the accident. The contents of Ex. P3 clearly show that the width of the tar road of NH-13 at the place of the accident was 24 feet with 10 feet kachcha road on either side. Ex. P3 further shows that the actual spot of collision was on the eastern edge of the road. The contents of Ex. P3 further states that Tata Sumo which was running on the western side of the road has gone on to eastern side and dashed against the bus as a result of which

 

bus moved about 100 feet further and fallen in to the road side ditch. The Police have also noticed spilling of oil on the eastern side of the road. Thus contents of Ex. P3 read with answers elicited in the cross-examination of P.W. 4 clearly demonstrates that the driver of the Tata Sumo has gone on to the wrong side of the road and dashed against the on coming bus. Merely because there was head on collision between two vehicles running in opposite directions, it cannot be readily presumed that the accident was on account of composite negligence of drivers of both the vehicles. No doubt when accident occurs involving two or more vehicles, it is necessary for the Tribunal to have considered the entire material on record to find out as to whether the accident was solely due to the negligence of any one of the driver or was due to the negligence of the drivers of all the vehicles involved in the accident. Though the learned Member of the Tribunal has not made in detail reference to the contents of spot mahazar Ex. P3, conclusion reached on issue No. 1, in our opinion is in consonance with the materials on record. Insurer of Tata Sumo has not disputed the contents of Ex. P3. The Police after investigation as to the manner in which the accident occurred, filed final report stating that the accident was due to the negligence of driver of the Tata Sumo. In addition to this, the driver of the bus has deposed before the Court as to how the accident occurred. Though R.W. 2 is cross-examined by the insurer of the Tata Sumo, nothing incriminating is brought out therein to disbelieve his evidence. R.W. 2 in his oral evidence has clearly stated that Tata Sumo in the process of overtaking a lorry going ahead of him came on to the wrong side and dashed against the bus. In the cross-examination of R.W. 2 by the learned counsel for the insurer of the Tata Sumo, it is elicited that the bus was going from Bijapur towards Sandur and it was a non-stop bus. Of-course, he has admitted that generally non-stop buses move at a higher speed. Nevertheless, regard being had to the fact that the bus was moving on the national highway, it is reasonable to infer that the bus was moving at a higher speed. However, mere speed is not a factor which is indicative of negligence. It is further elicited in the evidence that Tata Sumo was coming from Almatti side. It is further elicited in the cross-examination that the Tata Sumo driver in the process of overtaking the lorry came on to the wrong side. He has further stated that on seeing the vehicle coming on the wrong side, he applied break and in spite of the same, Tata Sumo came and hit the bus. He has denied the suggestion that he himself dashed to the Tata Sumo.

16. R.W. 2 being the driver of the bus was an eyewitness to the accident and he was competent witness to speak as to the manner in which accident occurred. His evidence corroborates the police documents more particularly the contents of Ex. P3. Therefore, his evidence would be of great assistance for the Court to come to the conclusion that the accident was solely due to the negligence of the driver of the Tata Sumo. In the light of the overwhelming evidence available on record, in our considered opinion, the Tribunal has not committed any error in recording the finding that the accident was due to the negligence of the driver of the Tata Sumo and there was no negligence on the part of the driver of the bus.

 

We find no perversity or illegality in the said finding. Therefore, we answer points 1 and 2 accordingly.

17. The next question would be as to whether the split multiplier method as contended by the learned counsel for the insurer is required to be applied. This argument, as noticed supra obviously is advanced in the light of the decision of the Division Bench in Lakshmi Kumar''s case referred to supra. In the said decision, of-course, the Division Bench of this Court has held that where the deceased had a very short tenure left out, while computing loss of dependency, it may be unfair to take the multiplicand determined for the entire multiplier period since the deceased would have retired shortly on attaining the age of superannuation and thereafter he would not be drawing the very same gross salary. However, the said decision was rendered while adopting the maximum multiplier of 18 as laid down in Trilok Chandra''s case, and the operating multiplier being reduced by one unit for every 5 years. However, the Apex Court in Sarla Verma and Others v. Delhi Transport Corporation and Another reported in 2009 AIR SCW 4992 has considered the question of adopting the multiplier method and as to the multiplier to be adopted for different age groups. In Sarla Verma, the Apex Court has also considered the question as to whether anything is to be added for the future prospects, while determining the multiplicand. While considering the said aspect, the Apex Court has held that where the deceased had a permanent employment and assured salary certain amount is required to be added towards future prospects. However, as a thumb rule, the Apex Court has held that 50% of actual salary drawn by the deceased is required to be added in respect of the persons up to the age of 40, and between 40 to 50 the additional factor should be 30% and no additional factor to be added for future prospects beyond 50 years of age. Their Lordships considering the multiplier methods adopted in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and New India Assurance Co. Ltd. Vs. Charlie and Another, , has laid down different method of multiplier to be adopted in such cases. According to the table formulated in Sarla Verma''s case the multiplier for the age group between 46 to 50 is 13, while for the next age group 51 to 55 multiplier is reduced to 11 and 56 to 60 multiplier is further reduced to 9. This is obviously for the reason that the person beyond 50 years would not have longer services and for the whole of the multiplier period he would not get the same amount of salary. A three judges bench of the Apex Court in Reshma Kumari and Others Vs. Madan Mohan and Another, , has affirmed the table enunciated in Sarla Verma''s case. The Tribunal too has adopted the table evolved in Sarla Verma''s case. Having regard to the fact that the multiplier itself has been reduced drastically for the persons in the age group of 51 to 55 and 56-60, we do not think that split multiplier method as enunciated in Lakshmi Kumar''s case could be applied. Therefore, we find no force in the contention of the learned counsel for the appellant. Point No. 3 is answered accordingly.

 

Re.: Point No. 4

18. There is no dispute that the deceased was working as Special Land Acquisition Officer in the Railways and as on the date of the accident, he was aged 55 years. Ex. P5 is the salary certificate issued by the Special Land Acquisition Officer for the month of September 2006. According to Ex. P5 gross salary of the deceased was Rs. 14,742/- and the deductions for, various payments was Rs. 1,192/- and the net salary was Rs. 13,550/-. The Tribunal has taken net salary as the basis for computing the loss of dependency. Claimants have produced Exs. P8 and P9 which are the last pay drawn certificates issued by the Special Land Acquisition Officer, Muneerabad - Maheboobnagar Railway Line Project, Sindhanoor. According to Ex. P8, gross salary for the month of October 2006 was Rs. 15,132/- probably on account of release of dearness allowance installment with effect from July, 2006. As per Ex. P9 gross salary for the month of October, 2006 was Rs. 17,024/-. This increase appears to be on account of major portion of dearness allowance having been merged with the basic since the basic is shown as Rs. 15,200/- in Ex. P9 while basic was Rs. 17,800/- under Ex. P8. In our considered opinion, since the deceased was entitled to draw gross salary as indicated in Ex. P9, that should have been the basis for computing the loss of dependency. Therefore, the Tribunal is not justified in taking the net salary as shown in Ex. P5. The only deduction permissible under law is payment towards professional tax and income tax if any. The professional tax payable was Rs. 150/- which is required to be deducted. If gross salary of the deceased is taken at Rs. 17,024/, by deducting Rs. 150/- per month towards professional tax, annual gross salary works out to Rs. 2,02,488/. The deceased was entitled to save a sum up to Rs. 1,00,000/- annually under the Income tax act and during the relevant year the tax exemption was up to Rs. 1,00,000/-. Therefore, the deceased was not within the taxable limit. Therefore, no deduction towards income tax is permissible.

19. The deceased has left behind wife and a son who is shown to be major. Nevertheless, the son is shown as student and he is required to be supported until he completes his education and settles in his life, therefore, he is also required to be treated as dependent therefore, the Tribunal has rightly deducted 1/3rd of the gross annual income towards personal and living expenses of the deceased. Therefore, 2/3rd representing Rs. 1,34,992/- would be annual loss of dependency. If this is multiplied by applying multiplier of 11 as applicable to the age of the deceased, the total works out to Rs. 14,84,912/-. The claimants are entitled for this amount towards loss of dependency. The awards under the conventional heads does not call for interference being just and proper.

20. In view of the above discussion, the appeal by the insurer is liable to be dismissed while cross objection filed by the claimants deserves to be allowed.

21. Accordingly, MFA No. 31771/2010 is dismissed. MFA CROB. No. 1026/2011 is allowed enhancing the compensation payable under the head loss of dependency to Rs. 14,84,912/- as against Rs. 11,92,360/-. The enhanced compensation of

 

Rs. 2,92,552/- shall carry interest at 6% per annum from the date of petition till the date of payment. The insurer of the Tata Sumo is directed to deposit the enhanced compensation with interest within six weeks from today. The enhanced compensation shall be apportioned and disbursed in accordance with the ratio as indicated in the award. The amount in deposit is ordered to be transmitted to the Tribunal concerned.

 