

(2014) 12 KAR CK 0222

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 32120/2011 (MV)

The Branch Manager United India Insurance Co. Ltd.

APPELLANT

Vs

Prema

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Motor Vehicles Act, 1988 — Section 166, 187

Penal Code, 1860 (IPC) — Section 279, 304(A), 337

Citation : (2014) 12 KAR CK 0222

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : S.S. Aspalli, Advocate for the Appellant; A.R. Kalyanashetty, Advocate for the Respondent

Judgement

A.V. Chandrashekara, J.—The present appeal is filed by the Insurance Company challenging the Award passed by the MACT No. 5 Bijapur in MVC No. 439/2010 dated 27.06.2011.

2. The Respondents are the legal representatives of one Subhash, who died in a road accident involving in the Tractor-Trailer bearing No. KA-28/T-4313 KA-28/T-4314. According to the claimants, deceased Subhash was returning from Yalagod village on his motor cycle bearing No. KA-28/Q-0790 and on 17.11.2009, at about 8.00 pm, on the same day, a tractor trailer bearing registration No. KA-28/T-4313 KA-28/T-4314 dashed against the said motor cycle, as a result of which, Subhash and the pillion rider fell down and sustained injuries. Because of severe injuries sustained, Subhash breathed his last at the spot itself.

3. On the basis of the first information lodged before the police, a case came to be registered in Cr. No. 99/2009, relating to the accident.

4. Smt. Prema is the wife of deceased Subhash and Respondents 2 and 3 are the parents. In all a sum of Rs. 6,78,000/- is awarded as compensation by the

Tribunal.

5. The insurance company has challenged the said Award mainly on the ground that deceased himself had contributed to the accident and hence, insurance company is not liable for indemnify his wife and parents. According to the learned counsel appearing for the insurance company, the accident took place when deceased Subhash was in the process of over taking of the said tractor and trailer and when he saw a vehicle was coming from opposite directions, he took his vehicle to the extreme left side and dashed against the right rear wheel of the trailer and fell down. This aspect of the matter has not at all been considered by the trial court is the contention. It is further argued that the trial court has not properly analysed the oral and documentary evidence placed in this regard and that the Tribunal has mechanically accepted the case of the claimants on the basis of the charge sheet filed by the police. It is argued that the rough sketch of the spot, where the accident took place discloses that the alleged accident occurred due to the contributory negligence on the part of deceased.

6. Perused the records and heard the learned counsel appearing for the parties.

7. In the written statement filed by the appellants as R-2 in the Tribunal, a specific stand is taken up in regard to the accident. Paragraphs 4 and 6 of the written statement filed by R-2 are relevant and they are reproduced below:

4. As per MVI Report the Motor Cycle No. KA-28-Q-0790 sustained damages to its" front portion. This substantiates that Motor Cycle was in very high speed and the rider of the Motor Cycle ahead was rash and negligent in causing the accident. At the same time the Tractor alleged to have involved in the accident has not at all damaged and also not involved in the accident as the complainant has failed to identify the vehicle and also it is very clearly mentioned that the vehicle has not mentioned any passing number.

6. This Respondent further submits that absolutely there was contribution of negligence on the part of the driver of the insured Tractor. Infact the deceased himself was negligent in riding his motor cycle bearing No. KA-28/A-0790, the deceased was overtaking the insured tractor and in such an attempt, deceased himself came and contact with the Tractor.

8. Admittedly, PW-1 Smt. Prema, wife of deceased is not an eye witness to the accident in question and PW-2 Malleshi was a pillion rider of the said motor cycle, driven by the deceased and the number of motor cycle driven by deceased was bearing No. KA28/Q-0790 He was travelling as a pillion rider in the said vehicle. This aspect is not seriously established while cross-examining the PW-2. What is suggested to him that deceased Subhash tried to over take the tractor and trailer and in that process, he found a vehicle which was coming from opposite side and therefore, he took his motor cycle towards extreme left side and dashed against the rear wheel of the trailer and fell down suggestion put to him that a vehicle was coming from opposite directions and in order to avoid the head on collusion, he took his vehicle towards extreme left side and came into contact of rear wheel

of the trailer has been specifically denied by PW-2. has deposed that the accident occurred on tar road. He has failed to explain the width of the tor road. He has admitted that the deceased dashed to the hind rear wheel of trailer. He has further deposed that in order to take turn towards right side, the tractor engine wheel move prior to trailer. He has further admitted the suggestion as time that the trailer will take turn after passing 20-30 feet ahead. Reliance is placed upon Ex. R-2 the sketch stated to have been prepared by the police, after inspecting the scene of occurrence. Of course, the width of the road is not mentioned in Ex. R-2. The dead body was found on the left side of the road. A few feet ahead of the dead body. The tractor is shown in the rough sketch. The motor cycle is also lying by the side of the road and it is also shown just below the hind wheel of the trailer. The rough sketch can only be taken to the limited extent of the position of dead body, at the time when the police visited to the spot. It cannot be taken as a gospel truth. The best witness to speak about the how the accident took place is PW-2. He has denied all the suggestions put to him by learned counsel appearing for the insurance company. The entire oral and documentary evidence placed on record will have to be taken into consideration as a whole. Ex. P-14 is the copy of charge sheet filed against the driver of the tractor and trailer in question for causing the death of Subhash, due to rash and negligence driving and a case had been registered in CC No. 43/2010 for the offences punishable U/ secs. 279, 337, 304(A) of IPC R/w Sec. 187 of IMV Act. The vehicle in question had been inspected by the Motor Vehicle Inspector on 20.11.2009 i.e., 3 days after the accident. Ex. P-12 is the statement of Ibrahimsab, who is an eye witness to the incident in question. Rashekhar is another eye witness and his statement was recorded U/sec. 161 of Cr.P.C. is found at Ex. P-11. The investigation was conducted by the police officials who are responsible public servants. After examining the witnesses, who were conversant with the facts of the case and after visiting to the spot and drawing up of the mahazar and taking opinion of the Motor Vehicle Inspector, police choose to file the charge sheet. It is very difficult to disbelieve the contents of the charge sheet which is inclusive of statements of eye witnesses, mahazar drawn at the spot, report of Motor Vehicle Inspector and also the rough sketch.

9. The mahazar drawn at the spot vide Ex. P5 is also equally relevant. The Mahazar was drawn on the next day of the accident by the I.O. in presence of witnesses, who have attested their signature. The contents of Ex. R-2 cannot be read in isolation of Ex. P-5-the spot panchanama. The medical opinion of the doctor, who conducted the Post Mortem discloses that the death was due to hemorrhage and neurogenic shock, because of the injuries to the vital organs such as lungs.

10. The Tribunal has assessed the entire evidence placed on record. The alleged negligence and rashness contributed to the driver in question has been properly dealt with the learned Presiding Officer of the Tribunal has relied upon the documents as well as the evidence of PW-2. The learned Presiding Officer has come to conclusion that the defence of the Insurance Company is not supported

by satisfactory and cogent evidence. Taking into consideration the totality of the case, the Tribunal has come to a specific conclusion that the case of the petitioners/claimants is more probable than the case of the respondent insurance company.

11. It is to be seen that the tractor driver did not intimate the police soon after the accident and did not provide medical facility immediately. Therefore, sec. 187 of Motor Vehicles Act is also included. It was incumbent upon the driver, to have intimated the police soon after the accident and to have taken steps to provide medical facilities when the injured had sustained severe injuries. In the light of the serious allegations of running away from the spot, without doing his lawful duty, and on overall reassessment of evidence, this court is of the considered opinion that there is nothing to interfere with the opinion of the Tribunal in so far as it relates to negligence of the driver of the tractor in question. Thus, there are no merits in the appeals and hence appeal is to be dismissed confirming the judgment of Tribunal.

12. The learned counsel appearing for appellant has argued that the multiplier adopted in the present case is incorrect. According to him the deceased was born on 10.07.1980 as per the D.L. produced by him and therefore he was aged about 29 years as on the date of accident. Therefore, proper multiplier applicable was 17 and not 18 as adopted by the Tribunal. The Tribunal has taken into consideration the age of deceased 24 years on the basis of Post Mortem report. Of course, the evidence in regard to D.L. will prevail over the age mentioned in Ex. P-4 P.M. Report, since the date of birth of the deceased mentioned in D.L. is on the basis of very statement given by the deceased to R.T.O.

13. Hence, the Tribunal ought to have taken into consideration 17 multiplier, but in the present case, the Tribunal has taken into consideration the approximate income of the deceased at Rs. 4500/- per month. After deducting 1/3rd, it has considered the net monthly income of the deceased is at Rs. 3,000/-. Admittedly, the petitioner is survived by his wife and appellants. He died at the age of 29 years and he had lot of future prospectus in his life. Admittedly, the deceased was financially sound. If he was not financially sound, he could not have owned a motor cycle. In this view of the matter assessing his gross income of Rs. 4,500/- would be on a lower side. Taking into consideration the future prospectus that deceased died and his wife and parents are depending on him, the total amount of compensation as awarded by the Tribunal is just and proper within the purview of Sec. 166 of M.V. Act. Hence, no interference called for.

ORDER

14. Appeal is dismissed.

15. The statutory amount if any deposited by the Insurance Company be transmitted to the concerned Tribunal the earliest by the Registry at the earliest. There is no order as to costs.