

(2015) 10 KAR CK 0213
In the Karnataka High Court

Case No : Miscellaneous First Appeal Nos. 30617/2008 (MV), 30616/2008 and 32318 of 2012

The Divisional Manager, New India Assurance Co. Ltd. and
Others

APPELLANT

Vs

Gurunath and Others

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0213

Hon'ble Judges : B. Sreenivas Gowda, J

Bench : Single Bench

Advocate : Sudarshan M., for the Appellant; B. Ali Mohammed, Advocates for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivas Gowda, J—MFA Nos. 30617/2008 and 30616/2008 are filed by the insurer of maxi cab bearing registration No. KA-39/0228 challenging the judgment and awards passed by the Tribunal on the ground of liability. MFA No. 32318/2012 is filed by the legal representatives of deceased Sharanabasappa seeking enhancement of compensation awarded by the Tribunal.

2. As all these three appeals are arising out of a common judgment, with the consent of learned counsel appearing for the parties they are heard together and disposed of by this common judgment.

3. The points that arise for consideration in these appeals are as under:

"1. Whether the Tribunal was justified in holding claimants have proved that Sharanabasappa and Gurunath who travelled on the motorcycle bearing registration No. KA-32/A-5169 as rider and pillion rider respectively, Sharanabasappa died and Gurunath sustained injury on account of rash and negligent driving of maxi cab bearing registration No. KA-39/0228?

2. Whether the Tribunal was justified in fastening the liability on the insurer of maxi cab?

3. Whether the compensation of Rs. 9,13,744/- with interest at the rate of 6% p.a. awarded in MVC No. 1034/2006 for the death of Sharanabasappa is just and reasonable or does it call for enhancement?"

4. Sri Sudarshan M., learned counsel appearing for the insurer of maxi cab bearing registration No. KA-39/0228 (for short, hereinafter referred to as "maxi cab") submits as per the complaint lodged by Prakash- brother of the deceased- Sharanabasappa, the accident has occurred due to rash and negligent driving of tempo bearing registration No. KA-28/3981 (for short, hereinafter referred to as Tempo") and maxi cab was not at all involved in the accident. He submits as the tempo was not having insurance as on the date of the accident, the maxi cab came to be implicated to the case for the purpose of obtaining compensation from the insurer of the said vehicle. The Tribunal without considering this has committed an error in holding that the accident has occurred due to rash and negligent driving of the driver of max cab and fastening the liability on the insurer of the said vehicle. Therefore, he prays for allowing the appeals filed by the insurers of maxi cab and dismissing the appeal filed by the claimants for enhancement of compensation.

5. Sri B. Ali Mohammed, learned counsel appearing for the claimants submits there is no illegality or infirmity in the finding of the Tribunal on liability warranting interference of this Court. He submits quantum of compensation awarded in MVC No. 1034/2006 for the death of Sharanabasappa is on the lower side and therefore, he prays for allowing the appeal filed by the claimants by enhancing the compensation and dismissing the appeals filed by the insurer of maxi cab.

Point No. 1

6. It is not in dispute that immediately after the accident, the brother of the deceased-Sharanabasappa viz., Prakash has lodged complaint to the police about the accident and it was marked along with the FIR as Ex. P1. In the complaint- Ex. P1, he has stated that in the morning of 29.03.2006 his elder brother Sharanabasappa (deceased) proceeded on his motorcycle bearing registration No. KA-32/A-5169 (for short, hereinafter referred to as "motorcycle") along with Gurunath S/o Manu Jadhav, a resident of their village to Chincholi in connection with his official duty. In the evening at 5.00 p.m. Dr. Gunderao informed him over phone that his elder brother Sharanabasappa and his friend Gurunath Jadhav after meeting the Assistant Director of Veterinary Hospital at Chincholi, they were returning in the motorcycle from Chincholi to their village Sulepeth, at that time, the tempo came in the opposite direction from Sulepeth in a rash and negligent manner, dashed against their motorcycle, as a result, his brother sustained grievous injuries to his head and died on the spot and Gurunath also sustained grievous injuries. Immediately, himself and his parents rushed to the

spot and noticed his brother was lying on the road and they came to know that Gurunath was shifted to the hospital. He has further stated that the accident has occurred due to the rash and negligent driving of the driver of the tempo and on account of the same his brother died on the spot and pillion rider -Gurunath sustained injuries and he was admitted to the hospital. Based on the said complaint, FIR was registered against the driver of the tempo. Perusal of the police records available in the records of the Tribunal would show that on 29.03.2006 itself the complainant - Prakash has made a statement before the police regarding damage caused to the motorcycle of his brother, at that time also he did not say anything about the involvement of the maxi cab in the accident. In his subsequent statement dated 03.04.2006 he has stated since the maxi cab (tempo) bearing registration No. KA-28/3981 was standing in the land nearby the place of accident, in his complaint lodged to the police on 29.03.2006 he has stated that driver of the said vehicle has caused accident resulting in the death of his brother. One Laxman Pujari Munsli who had come to the funeral ceremony of his brother on 30.03.2006 has informed him that the vehicle which dashed against the motorcycle causing death of his brother and injury to Gurunath is tempo bearing registration No. KA-39/0228 and it is maxi cab. The statement of Dr. Gunderao who alleged to have informed the complainant-Prakash over phone about the accident was also recorded on 03.04.2006. He also does not say about the involvement of either tempo or maxi cab. In the statement of Gurunath recorded by the police on 12.04.2006 in the presence of the doctor while he was taking treatment at City Hospital he does not say about the involvement of either maxi cab or tempo in the accident and his statement must have been recorded in the MLC and the said extract of MLC was not produced by the claimants. It is in his subsequent statement dated 29.06.2006 i.e., three months after the accident has stated that a maxi cab and a tempo were proceeding by chasing each other and accident occurred due to rash and negligent driving of the driver of the maxi cab. The claimants in MVC No. 1034/2006 have examined the first claimant-Mangala, wife of the deceased as PW.1 and the injured-Gurunath who is claimant in MVC No. 1035/2006 was examined as PW.2. Admittedly, PW.1-Mangala wife of the deceased-Sharanabasappa is not a witness to the accident. PW.2-Gurunath-claimant in MVC No. 1035/2006 has not lodged the complaint to the police about the accident. As already stated, PW.2 in his statement recorded by the police on 12.04.2006 i.e., fifteen days after the accident has not mentioned about the involvement of either maxi cab or tempo in the accident. As such, evidence of either PW. 1 or PW.2 do not help the claimants in establishing that the accident has taken place due to the rash and negligent driving of the driver of the maxi cab. Dr. Gunderao who alleged to have informed the complainant-Prakash brother of the deceased-Sharanabasappa in his statement dated 03.04.2006 has not stated anything about the involvement of either maxi cab or tempo. However, the said Gunderao has not been examined by the claimants. Therefore, finding of the Tribunal that claimants have proved that death of Sharanabasappa and injuries sustained by Gurunath claimant in MVC No. 1035/2006 are on account of

rash and negligent driving of the driver of the maxi cab is contrary to evidence on record and is not sustainable in law.

7. At this juncture, Sri Ali Mohammed, learned counsel appearing for the claimants prays for remanding the matter to the Tribunal in order to enable the claimants to lead additional evidence by examining some more charge sheeted witnesses who have spoken about the involvement of maxi cab in the accident.

8. In response to his submission, Sri Sudarshan M., learned counsel appearing for the insurer of maxi cab submits in the event of Court remanding the matter to the Tribunal and giving opportunity to the claimants to lead additional evidence, the insurer of maxi cab may be given an opportunity to cross-examine the claimants on such additional evidence and also to lead additional evidence if any from their side as well.

9. In the facts and circumstances of the case, I deem it just and proper to allow the appeals and set aside the impugned judgments and awards and remand the matters to the Tribunal for reconsideration of the claim petitions afresh after giving opportunity to both the parties.

10. The learned counsel appearing for the claimants submits since the claimants in MVC No. 1034/2006 have also preferred the appeal seeking enhancement of compensation, judgment and awards passed by the Tribunal may be set aside in its entirety and the Tribunal may be directed to reconsider the claim petitions afresh on all the issues including quantum.

11. I find some force in the submission of the learned counsel appearing for the claimants.

12. Hence, I pass the following:

ORDER

The appeals are allowed. The judgment and awards dated 30.09.2008 passed in MVC Nos. 1034/2006 and 1035/2006 by the I-Additional Civil Judge (Senior Division) and MACT at Gulbarga, are set aside in its entirety. The matters are remitted to the Tribunal with a direction to reconsider the claim petitions in MVC Nos. 1034/2006 and 1035/2006 afresh after giving opportunity to the parties to lead additional evidence and in accordance with law.

All the parties are permitted to lead additional evidence and in such an event, it is needless to say the opposite parties will have the right of cross-examining the parties who lead additional evidence.

Since the claimants and the insurer of maxi cab are represented in the appeals through their respective advocates, they are directed to appear before the Tribunal on 16.11.2015 without expecting further notice from the Tribunal.

The claimants are directed to take steps to issue notice to the owner of the maxi cab on the said date or in the next date of hearing without seeking unnecessary

adjournments.

It is open to the claimants as well as to the insurer of maxi cab to take steps to implead the owner and the insurer of tempo bearing registration No. KA-28/3981, which is the vehicle mentioned in the complaint and the FIR, if they feel necessary to do so.

In view of dismissal of main appeals, Misc. Cvl. Nos. 150114/2009 filed in MFA No. 30617/2008 and Misc. Cvl. No. 150115/2009 filed in MFA No. 30616/2008 do not survive for consideration and accordingly, they are rejected.

The amount in deposit is ordered to be refunded to the insurance company.