

(2008) 09 KAR CK 0080

In the Karnataka High Court

Case No : M.F.A. No's. 3286 and 4386 of 2003

The Divl. Controller Chief Custodian of Internal Insurance
Fund

APPELLANT

Vs

K.C. Roopa and Others
 Smt. K.C. Roopa,
Karithimmegowda and S.P. Srikanthegowda Vs The Divisional
Controller Chief Custodian of Internal Insurance Fund,
Insurer and Owner of KSRTS Bus Bearing No. KA-09/F 1506,
V.K. Babu and The Branch Manager United India Insurance
Co. Ltd.

RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2010) ACJ 438 : (2009) 1 KCCR 182

Hon'ble Judges : Deepak Verma, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : F.S. Dabali, in M.F.A. No. 3286/2003 and Mari Gowda, in M.F.A. No. 4386/2003, for the Appellant; S. Srishaila, for R5 in M.F.A. No. 3286/2003 and F.S. Dabali, for R1 and Srishaila, for R-3 in M.F.A. No. 4386/2003, for the Respondent

Judgement

1. Sri F.S. Dabali, learned Counsel appeared for the claimants and Sri S. Srishaila, learned Counsel appeared for respondent No. 5, Sri Marigowda, learned Counsel appeared for respondent No. 3, Insurance Company. None appeared for respondent No. 2.

2. This order shall also govern disposal of connected appeal as both have been preferred against the same award passed by M.A.C.T., Mandya on 13.01.2003 in M.V. Case No. 811/97 (Smt. K.C. Roopa and Ors. v. Divisional Controller and Ors.),

3. Certain material facts of the case in nut shell are as under:

Deceased Shivanna had come to Bangalore on 07.05.1997, for the purposes of

selling vegetables at Sri Vinayaka Mandi Market. After selling vegetables he started for his home in a car bearing No. GDE 572 along with others. It was being driven by its driver and belonged to respondent No. 2 V.K. Babu and was insured with respondent No. 3 United India Insurance Co., Ltd. The car was travelling on Bangalore-Mysore road and it was being driven in a rash and negligent manner. A bus belonging to respondent No. 1, Karnataka State Road Transport Corporation (hereinafter referred to as K.S.R.T.C.) bearing registration No. KA-09-F 1506 was coming from Mysore to Bangalore. There was head on collision between the two vehicles. Deceased Shivanna sustained grievous and multiple bodily injuries. He died on way to hospital. At the time of accident deceased Shivanna was aged about 26 years and according to claimants he was earning Rs. 4,500/- per month. On account of his death, a claim petition was filed by his widow and his two elder brothers.

4. The Claims Tribunal, after appreciating the evidence available on record came to the conclusion that claimants were entitled to receive in all a sum of Rs. 1,53,600/- with costs and interest at the rate of 8%, but liability was apportioned to the extent of 50% each on both the offending vehicles i.e., to say 50% to be recovered from K.S.R.T.C. and remaining 50% to be recovered from owner of the car.

5. M.F.A. 4386/2003, has been filed by the claimants, primarily on two grounds, firstly that the amount of compensation awarded is on lower side and deserves to be enhanced and secondly that the liability should have been fastened on the Insurance Company as by the impugned award it has wrongly been exonerated.

6. M.F.A. No. 3286/2003, has been filed by K.S.R.T.C. on the grounds that Tribunal committed an error in holding it liable to the extent of 50% and directing payment of interest at the rate of 8%, which is on higher side.

7. As mentioned herein above, since both the appeals arise out of the same award, they were heard analogously and are being disposed of by this common order. Records perused.

Admittedly ambassador car bearing registration No. GDE 572 belonged to respondent No. 2 and was insured with respondent No. 3. It was not a commercial vehicle and was a private vehicle of respondent No. 2. He had only taken Act Policy for the said vehicle i.e., to say for covering third party risk only. Ex. R-I is the copy of the said policy.

8. In the said unfortunate accident driver and six persons had died. Thus in all, six claim petitions were filed in different courts. It appears that no attempts were made by the parties to club them together and to be heard and disposed of by a common award by one and the same Tribunal. They were also decided at different point of time. We have been given to understand in all other five awards were passed by five different Tribunals. The Insurance Company has already satisfied those five awards passed earlier. Insurance Company was required to do so on account of the fact that the law so existed at that time.

9. The law now stands settled with regard to this question of liability of Insurance Company for Act policy or third party risk coverage by a recent judgment of the Supreme Court reported in AIR 2008 SCW 4549 (Oriental Insurance Co. Ltd. v. Sudhakaran K.V. and Ors.), wherein it has been held that liability of Insurance Company where the contract of Insurance covered the risk of third party but not that of owner or pillion rider of two wheeler, then it cannot be extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk. The legal obligation arising u/s 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider. The pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.

10. In the aforesaid judgment, Supreme Court has also taken into consideration an earlier judgment of its Court reported in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, in which it has been held as under:

In our view, although the observations made in New India Assurance Co. Ltd. Vs. Asha Rani and Others, , were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant insurance company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy and hence it did not cover the risk of death of or bodily injury to gratuitous passenger.

11. Supreme Court, after considering various judgments on the point, ultimately succinctly held as under, which finds place in para 19 of SUDHAKARAN.K.V. (supra):

The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/ extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle.

12. In the facts of the aforesaid case, it is clear that deceased was travelling in a private car, which had only Act Policy, i.e., covering only third party risk, driver was not entitled to carry passengers in the same. In view of the aforesaid judgments of the Supreme Court, now the question is no more resintegra that such a passenger would not be covered under the policy. To satisfy ourselves, we have also examined the terms and conditions of the policy which clearly says with regard to seating capacity as 5+1 persons, meaning thereby 5 persons and one driver, but it does not disclose that any additional payment of premium for covering the liability of those 5 persons was made. Thus the ratio of the

aforesaid judgments squarely applies to the facts of the case.

13. In view of the aforesaid discussion, we have no hesitation to hold that Tribunal has committed no error in exonerating Insurance Company from its liability. Thus whatever amounts have been awarded to the claimants, would be payable only by owner of the car and owner of bus i.e., K.S.R.T.C.

14. Learned Counsel appearing for K.S.R.T.C. contended that Tribunal committed a grave error in coming to the conclusion that both vehicles were responsible for causing the accident to the extent of 50% each, meaning thereby they had contributed to the said accident in equal proportion.

15. In the records, except F.I.R and other preliminary investigation that had taken place soon after accident, no other documents were available to the Tribunal to show as to on whom the greater liability could have been fastened.

16. As we have mentioned herein above that there were other claim petitions also, filed by the Legal Representatives of other deceased in the same accident in which awards were already passed by other Tribunals and also satisfied by the Insurance Company. Those were challenged by the claimants by filing M.F.As. in this Court for enhancement. They had come up before learned Single Judge on 18.07.2005. Learned Single Judge after going through the spot panchnama drawn by the police after the accident, recorded a finding that the negligence of the K.S.R.T.C. bus has to be assessed at 30% and that of the car has to be assessed at 70%. This finding of the learned Single Judge has been recorded, after taking into consideration the width of pakka road and the width of kachcha road, available on both sides of pakka road and the position of the two offending vehicles found at the site.

17. To satisfy ourselves, we have also looked at it from all angles and find that the learned Single Judge has correctly recorded it and assessed the liability of K.S.R.T.C. bus at 30% and the of the car at 70% only. In view of the aforesaid finding already recorded by learned Single Judge in M.F.A.7050/2001, finding of the Tribunal holding both the vehicles responsible for causing accident to the extent of 50% each, cannot be sustained in law and deserves to be set aside. The finding recorded by learned Single Judge in M.F.A. No. 7050/2001, has already attained finality. We also accordingly hold that the driver of the bus and driver of the car contributed for the accident to the extent of 70% and 30% respectively, meaning thereby that out of total amount of compensation payable to the claimants, liability on K.S.R.T.C. is fixed only at 30% only and that of the owner of the car is fixed at 70%.

18. Now the question that arises for consideration is whether the \\ Tribunal was justified in awarding a meager sum of Rs. 1,53,600/-to the claimants for death of young man, aged 26 years, on account of the said accident. It has already come on record that he was married just 15 days before the date of accident. Appellant No. 1 Smt. K.C. Roopa is his young widow who was aged only 20 years at the time of the accident. Claimants 2 and 3 are the elder brothers of the deceased.

There is no evidence on record to show that the brothers of deceased, claimants No. 2 and 3 were dependant on the income of the deceased. Thus in our view, they would not be entitled to be awarded any compensation for death of younger brother Shivanna. Tribunal committed an error in awarding 30% of the award to them. This finding of the Tribunal stands hereby set aside and quashed. According to claimants, deceased was engaged in the business of selling vegetables which he used to grow in his own field and also after purchasing from others, then he used to bring it to the main vegetable market at Bangalore for selling the same. R.T.Cs. have been filed in this regard and marked as Exs.P-6 to 12 to show he was holding agricultural lands. Apart from that, Exs.P-3 to 5 are the receipts issued by Sri Vinayak Mandi, to show that deceased was carrying on vegetable business in the said Mandi at Bangalore. Despite the aforesaid evidence having been produced by claimant No. 1 Smt. K.C. Roopa, his widow, income of the deceased has been assessed only at Rs. 1,200/- per month. This according to us is on lower side.

19. By a most modest computation, according to us, deceased must have been earning not less than Rs. 3,000/- per month. Thus it would come to Rs. 36,000/- per annum. After deducting 1/3rd amount which he must have been spending on himself, the yearly dependency for claimant No. 1 Smt. K.C. Roopa would be at Rs. 24,000/-. Looking to the age of the deceased and that of claimant No. 1 Smt. K.C. Roopa, the multiplier of 17 would be proper. Thus 24,000 X 17 works out to Rs. 4,08,000/-, which according to us would be the loss of dependency for claimant No. 1 Smt. K.C. Roopa, widow of deceased Shivanna.

20. As has been mentioned herein above, claimant No. 1 was married to deceased only 15 days before the date of accident. There is nothing on record to show that after death of her husband Shivanna she has got re-married. Thus she continues to be a widow. We therefore deem it fit and proper to award further lumpsum payment of Rs. 50,000/- to her only under conventional heads such as loss of consortium, loss of love and affection, loss to the estate, funeral expenses and other obsequies ceremonies, transportation of dead body and loss of cash and watch of the deceased. Thus the total amount of compensation payable to claimant No. 1 Smt. K.C. Roopa would come to Rs. 4,58,000/-.

21. Out of the aforesaid amount, the liability of K.S.R.T.C. would be to the extent of 30% i.e., Rs. 1,37,400/- and that of the owner of the car would be 70% i.e., 3,20,600/-.

22. Looking to the facts and features of the case, we deem it fit and proper to award interest on the aforesaid amount at the rate of 6% per annum from the date of petition till it is actually paid. All the amount that has been awarded by the aforesaid judgment, would be payable only to claimant No. 1 Smt. K.C. Roopa. Claimant No. 1 Smt. K.C. Roopa would be at liberty to recover balance amount from respondent No. 2, owner of the car. We have already held that no liability is fastened on the Insurance Company, which stands exonerated.

23. The impugned award passed by Tribunal stands modified to the extent mentioned herein above. Consequently the appeal of claimant i.e., M.F.A. No. 4386/2003 stands allowed to the aforesaid extent with costs throughout to be borne by K.S.R.T.C., counsel's fee at Rs. 5,000/-, if certified. 50% of the amount awarded shall be deposited in a scheduled nationalised bank fetching maximum interest in F.D.R. for a period of six years. Only remaining amount would be paid to claimant No. 1 Smt. K.C. Roopa, after adjustment, if already received. The amount deposited by K.S.R.T.C. in its appeal would stand transferred to the concerned Claims Tribunal. The appeal of K.S.R.T.C. i.e., M.F.A. No. 3286/2003 also stands allowed to the aforesaid extent only.

A copy of this judgment be retained in connected M.F.A. No. 4386/2003.