

(2013) 08 KAR CK 0010

In the Karnataka High Court

Case No : M.F.A. No. 10807 of 2007 (MV) and C/W. M.F.A. No. 11243 of 2007 (MV)

United India Insurance Co., Ltd.

APPELLANT

Vs

Master Roshan and Others
 Master Roshan Vs Sri. D.
Ravi Shankar Puranthar and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2013) 08 KAR CK 0010

Hon'ble Judges : N.K. Patil, J;B. Manohar, J

Bench : Division Bench

Advocate : B.C. Seetharama Rao in M.F.A. No. 10807 of 2007 MV, Shri. K.N. Jayaprakash in M.F.A. No. 11243 of 2007 MV and Shri. A.M. Venkatesh in M.F.A. No. 8321 of 2008 MV, for the Appellant; G.D. Gangadhar, Advocate for R3, R4 (i) and (ii) in M.F.A. No. 10807 of 2007 (MV), Shri. B.C. Seetharama Rao, Advocate for R2 in M.F.A. No. 11243 of 2007 (MV) and for R3 in M.F.A. No. 8321 of 2008 (MV), Shri. Raghavendra Kattimani, Advocate for R4 (a) and (b) in M.F.A. No. 11243 of 2007 (MV) and for R5 (a) and (b), Notice to R4 dispensed with v/o. dated 22/01/2010; R1 and R2 served in M.F.A. No. 8321 of 2008 (MV) and Shri. A.M. Venkatesh, Advocate for R5, Notice to R3 dispensed with v/o. dated 22/01/2010; R1 served in M.F.A. No. 11243 of 2007 (MV) and for R5; R1 and R2 served in M.F.A. No. 10807 of 2007 (MV), for the Respondent

Judgement

N.K. Patil, J.—These three appeals respectively by the United India Insurance Company Limited, claimant Master Roshan, and M/s. National Insurance Company Limited are directed against the same common judgment and award dated 22nd February 2007, passed in M.V.C. No. 32/2004 (old M.V.C. No. 61/2004), by the Additional Sessions Judge and Additional Motor Accident Claims Tribunal, Fast Track Court-I, Davangere, (for short, "Tribunal"). While the two Insurers have filed the appeals on the ground that, the Tribunal is not justified in fixing the contributory negligence in the ratio of 60:40 on the part of the drivers of Car and Tractor-Trailer respectively, the claimant-Master Roshan, represented by his uncle, has filed the appeal, seeking enhancement of compensation on the

ground that the compensation of Rs. 10,99,840/- (but, wrongly mentioned in the judgment and order portion as Rs. 16,46,260/-) awarded by Tribunal is on the lower side and liable to be enhanced by adding 50% towards future prospects of the deceased.

2. The facts of the case as stated in the claim petition are that, at about 11:00 P.M., on the ill-fated day, i.e. on 21-05-2003, in front of Nobel Tarpaulin company on Davangere Harihar Road/P.B. Road, within the limits of Traffic P.S. Davangere, when the deceased Smt. Dr. Jyothi, along with others was travelling in Car bearing Registration No. AP-17/MG-4050, she met with an accident on account of rash and negligent driving by the driver of Car as well as on account of negligent act of the driver of Tractor-Trailer, bearing Registration No. MEZ-5224 and 5226, which was parked in the centre of the said Road, without following traffic Rules and Regulations. Due to the impact, the deceased Dr. Jyothi sustained grievous injuries and succumbed to the same on the spot.

3. The claimant herein-Master Roshan is none other than the only son of deceased Dr. Jyothi, aged about 31 years, who succumbed to the injuries sustained in the road traffic accident. It is the case of the claimant that, deceased was a Doctor by profession and on account of her death, the child has lost the love and affection, inspiration, guidance, social and moral support. The claimant is represented by uncle and therefore, the claimant has; to be compensated reasonably, on account of the death of the deceased mother, Dr. Jyothi, in the road traffic accident.

4. On account of the death of the deceased Dr. Jyothi, in the road traffic accident, the claimant filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 75,00,000/- against the owners and Insurers of both the offending Car as well as Tractor-Trailer and the same was numbered as M.V.C. No. 32/2004. The said claim petition had come up for consideration, along with other claim petitions arising out of the same accident, before the Tribunal on 22nd February, 2007. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition filed by claimant herein, in part, awarding compensation of a sum of Rs. 10,99,840/-, with 6% interest per annum, and directed the Insurers, i.e. United India Insurance company Limited-appellant in M.F.A. No 10807/2007 and M/s. National Insurance Company Limited, appellant in M.F.A. No. 8321/2008 to deposit the said sum in the ratio of 60:40 respectively. Being aggrieved by the contributory negligence fixed on the part of the drivers of both the Car and Tractor-Trailer in the ratio of 60:40, both the Insurers are in appeal before this Court, seeking to re-fix the contributory negligence on the part of the drivers of both the vehicles, to meet the ends of justice, whereas the claimant is also in appeal before this Court, seeking enhancement of compensation, by adding 50% towards future prospects of deceased.

5. We have heard Shri. B.C. Seetharama Rao, learned counsel appearing for

United India Insurance Company Limited, Shri. K.N. Jayaprakash, learned counsel appearing for claimant and Shri. A.M. Venkatesh, learned counsel appearing for M/s. National Insurance Company Limited, gone through the grounds urged in the memorandum of appeal filed by all the three parties carefully and perused the impugned judgment and award passed by Tribunal, including the original records placed before us.

6. Shri. B.C. Seetharama Rao, learned counsel appearing for United India Insurance Company vehemently submits that the Tribunal committed an error, resulting in serious miscarriage of justice, in fixing contributory negligence in the ratio of 60:40, on the part of the drivers of Car and Tractor-Trailer respectively, when in fact, the driver of Tractor-Trailer was fully negligent in parking the said vehicle in the middle of the road without any indicating or parking signal. To substantiate the same, he has taken us through the oral and documentary evidence, including the sketch and submitted that, the Tractor-Trailer was parked in the middle of the road, without any indicating or parking lights for breakdown of the said vehicle. In support of the same he also relied upon the Division Bench decision of this Court, in the case of Kumari Jyothi and others Vs. Mohd. Usman Ali and Others reported in ILR 2002 Kar. 893 (Paragraph 13) and submitted that when the driver of the Tractor-Trailer had parked the said vehicle in the middle of the road, the Tribunal is not justified in fixing 60% negligence on the part of the driver of the Car and the same is liable to be set aside.

Regarding quantum of compensation, he submitted that the compensation awarded by Tribunal is on the higher side as the claimant is none other than the only son of the deceased and therefore, compensation awarded by Tribunal may be reduced, by modifying the impugned judgment and award passed by Tribunal.

7. As against this, Shri. A.M. Venkatesh, learned counsel appearing for M/s. National Insurance Company Limited vehemently submitted that the Tribunal is not at all justified in fixing contributory negligence at 40% on the driver of the Tractor-Trailer, for the reason that the driver of the Tractor-Trailer had parked the said vehicle on the left side of the tar road, with a width of 22 ft. on account of breakdown, leaving more than 15 ft. for the vehicular traffic to pass through without any hindrance and if the driver of the Car had been cautious and vigilant instead of being rash and negligent, he could have well avoided the accident. To substantiate the said submission, he has taken us through the documentary evidence at Ex. P1 - spot sketch and submitted that, the Tractor-Trailer had taken only 7 ft. space out of the 22 ft. Tar road and there was enough space left for the vehicles passing through and in fact, the accident occurred due to rash and negligent driving by the driver of the Car. But, the investigating authority has filed the charge sheet against the drivers of both the Car as well as the Tractor-Trailer, which cannot be sustained and that the entire negligence ought to have been fixed on the driver of the Car. Therefore, he submitted that the impugned judgment and award passed by Tribunal is liable to be modified by setting aside the negligence of 40% fixed on the part of the driver of Tractor-

Trailer.

Regarding the aforesaid Division Bench judgment relied upon by the learned counsel appearing for United India Insurance Company, he submits that the facts and circumstances of the said case are entirely different from the facts and circumstances of the present case, inasmuch as in the judgment relied upon by the counsel, the offending vehicle was parked in the middle of the road, when in fact, the Tractor-Trailer in the instant case was parked well on the left side of the road, leaving enough space for the other vehicular traffic to pass through. Therefore, the ratio of law laid down in the said judgment is of no assistance to him and cannot be made applicable to the facts and circumstances of the case on hand.

Regarding the quantum of compensation awarded by Tribunal, he submits that the compensation awarded by Tribunal is just and reasonable and after critical evaluation of the oral and documentary evidence available on file and hence, interference in the same is not called for.

8. As against this, learned counsel appearing for claimant vehemently submitted that, the claimant is entitled for higher compensation than awarded by Tribunal for the reason that, as per the decision of the Hon''ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the claimant is entitled for 50% addition towards future prospects of the deceased, as the deceased Dr. Jyothi was aged about 31 years and a Doctor, working as Lecturer in J.J.M. Medical College, Davangere, drawing salary of Rs. 9,107/- per month, as per Ex. P16. Therefore, 50% of the income may be added and reasonable enhancement may be made towards loss of dependency, adopting proper multiplier and deducting reasonable amount towards the personal expenses of the deceased. Further, he submitted that the Tribunal is not justified in awarding only a sum of Rs. 7,000/- towards conventional heads and the same is liable to be enhanced to Rs. 45,000/- as per the decision in Sarla Verma's case (supra).

Regarding contributory negligence fixed in the ratio of 60:40 on the part of the drivers of Car and Tractor-Trailer respectively, he submitted that the Tribunal, after critical evaluation of the oral and documentary evidence available on file, has rightly fixed the same and hence, interference in the same is not called for.

9. After hearing the rival contentions of the parties, after perusal of the impugned judgment and award passed by Tribunal and after re-appreciation of the oral and documentary evidence available on file, the points that arise for our consideration in these three appeals are:

I] Whether the Tribunal is justified in fixing the contributory negligence in the ratio of 60:40, on the part of the drivers of the Car and Tractor-Trailer respectively?

II] Whether the claimant is entitled to additional 50% towards future prospects of the deceased Dr. Jyothi?

Re-Point I]: Occurrence of accident and the resultant death of the deceased Dr. Jyothi are not in dispute. It is also not in dispute that the claimant is none other than the only son of the deceased. It is further not in dispute that the deceased Dr. Jyothi was travelling in the offending Car. Further, it is also not in dispute that charge sheets have been filed by the Investigating Agency, after conducting due enquiry with the drivers of both the offending vehicles, viz. Car and Tractor-trailer. After going through the contents of Ex. P13- spot sketch, it emerges that, the tractor-trailer was parked on account of breakdown on the left side of the road, by utilizing space of 7 to 8 ft. and the total width of the road is 22 ft. Further, it emerges from the said sketch that the driver of the Car was coming right behind the Tractor-trailer, where it was parked. Due to rash and negligent driving by the driver of the Car, it went and touched the rear side of the tractor-trailer. It is the case of the Insurer of the Car, i.e. United India Insurance Company Limited that the driver of the Tractor-trailer, without following traffic Rules and regulations, had parked the vehicle without giving any indicating signal nor any other signals to show that the said vehicle has been parked due to breakdown of vehicle. On the other hand, it is the case of the driver of the Tractor-Trailer that he had parked the said vehicle on the left side of the road by putting signals and leaving nearly 15 ft. of space wide open to the vehicular traffic to pass through comfortably. In fact, the driver of the Car, without following the rules and regulations, has come from behind the parked vehicle and hit and damaged the said vehicle and as per the IMV report, the nature of damage caused reflects that the front portion of the Car and the rear portion of the Tractor-trailer are damaged. The contents of FIR and the complaint also prove beyond all reasonable doubt that there is negligence on the part of the drivers of both Car and Tractor-trailer in causing the accident. After due re-appreciation of the oral and documentary evidence available on file and other material, taking into consideration the reasoning given by the Tribunal at paragraph 8 of its judgment, and after microscopic evaluation of the contents sketch, which is available in the original records at red ink page No. 69, it can be seen that there is negligence on the part of the drivers of Car and Tractor-trailer. Therefore, having regard to all the relevant material available on file, we answer point No. I] in the "Negative" and are inclined to modify the contributory negligence fixed by Tribunal in the ratio of 60:40 and re-fix the same in the ratio of 70:30 on the part of the drivers of Car and Tractor-trailer, respectively, to meet the ends of justice.

10. Regarding the judgment of the Division Bench of this Court, relied upon by the learned counsel for United India Insurance Company, stated supra, it is seen that the facts and circumstances of the said case are entirely different from the facts and circumstances of the case on hand. In the referred case, the vehicle was parked on the middle of the road, whereas in the instant case, the Tractor-trailer was parked on the left side of the road and there was enough space for the vehicular traffic to pass through. Therefore, the ratio of law laid down by the Division Bench in the aforementioned judgment cannot be made applicable to the

present case.

Re-Point II]: So far as quantum of compensation awarded by Tribunal is concerned, occurrence of accident and the resultant death of deceased Dr. Jyothi are not in dispute. It is also not in dispute that the deceased Dr. Jyothi was aged about 31 years as on the date of accident and working as a Lecturer in J.J.M. Medical College, Davangere, drawing salary of Rs. 9,107/- per month, as per Ex. P16. She was an Income Tax assessee and was duly filing her returns and for the relevant year, her annual income was Rs. 1,09,284/- per annum. The Tribunal is justified in assessing the said income. But, as rightly pointed out by the learned counsel appearing for claimant, 50% of the same is to be added to the total income towards future prospects of the deceased as per the law laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Accordingly, if 50% (i.e. Rs. 54,642/-) is added to the aforesaid salary of the deceased, the total income comes to Rs. 1,63,926/- per annum. Out of this, if 15%, i.e. Rs. 24,589/- is deducted towards income tax, the net annual income comes to Rs. 1,39,337/-. Out of this, since there is only one dependent, i.e. the minor son, Master Roshan, we deduct 50% towards the personal and living expenses of the deceased as per Sarla Verma's case (supra). Accordingly, if 50% (i.e. Rs. 69,668/-) is deducted from it, the net income comes of Rs. 69,669/-. Further, as the deceased was aged about 31 years at the time of accident, the appropriate multiplier applicable is "16", in view of the aforesaid judgment. Thus, the compensation towards loss of dependency would work out to Rs. 11,14,704/- (i.e. Rs. 69,669/- x "16") as against Rs. 10,92,840/- awarded by Tribunal.

11. Further, so far as compensation awarded towards conventional heads is concerned, we are of the considered view that a sum of Rs. 7,000/- awarded under the conventional heads is on the lower side and as per the decision of the Apex Court in Sarla Verma's case (supra), we award a sum of Rs. 45,000/- under the conventional heads. Thus, the total compensation would work out to Rs. 11,59,704/- as against Rs. 10,99,840/- awarded by Tribunal. There would be enhancement of compensation by a sum of Rs. 59,864/-.

12. As per the contributory negligence re-fixed by this Court as above, in the ratio of 70:30 on the part of the drivers of Car and Tractor-trailer respectively, the appellant in M.F.A. No. 10807/2007, i.e. United India Insurance Company Limited shall deposit 70% of Rs. 11,59,704/- and the appellant in M.F.A. No. 8321/2008, i.e. M/s. National Insurance Company Limited shall deposit 30% of Rs. 11,59,704/- with interest at 6% per annum from the date of petition till the date of realization. Accordingly, we answer point No. II] in the "Affirmative". In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant-United India Insurance Company Limited in M.F.A. No. 10807/2007 is dismissed and the appeal filed by claimant-Master Roshan in M.F.A. No. 11243/2007 and the appeal filed by appellant-M/s. National Insurance Company Limited in M.F.A. No. 8231/2008 are allowed in part.

The impugned common judgment and award dated 22nd February 2007, passed in MVC No. 32/2004 (old M.V.C. No. 61/2004), by the Additional Sessions Judge and Additional Motor Accident Claims Tribunal, Fast Track Court-I, Davangere, is hereby modified;

The contributory negligence fixed in the ratio of 60:40, on the part of the drivers of both the Car and Tractor-trailer respectively is hereby set aside and the same is hereby modified, by re-fixing contributory negligence in the ratio of 70:30, i.e. 70% on the part of the driver of Car and 30% on the part of the driver of the Tractor-Trailer, to meet the ends of justice.

The total compensation awarded by Tribunal is also modified, awarding compensation of Rs. 11,59,704/- as against Rs. 10,99,840/- awarded by Tribunal. There would be enhancement of compensation by a sum of Rs. 59,864/-.

As per the contributory negligence fixed at 70:30, The appellant in M.F.A. No. 10807/2007, i.e. United India Insurance Company Limited shall deposit 70% of Rs. 11,59,704/- and the appellant in M.F.A. No. 8321/2008, i.e. M/s. National Insurance Company Limited shall deposit 30% of Rs. 11,59,704/- with interest at 6% per annum from the date of petition till the date of realization.

As it is stated by learned counsel appearing for both Insurers that they have not deposited any amount towards compensation, we set aside the apportionment of compensation ordered by Tribunal and we apportion the total compensation of Rs. 11,59,704/- afresh.

Out of the total compensation of Rs. 11,59,704/-, a sum of Rs. 10,00,000/- shall be invested in Fixed Deposit, in the name of the claimant-minor son of deceased Dr. Jyothi, in any Nationalized/Scheduled Bank, till he attains the age of 30 years, with liberty reserved to the guardian to withdraw the interest periodically, for his welfare, till the claimant attains the age of 21 years and thereafter, the claimant is entitled to withdraw the interest periodically till he attains 30 years;

Remaining Rs. 1,59,704/- with interest on total compensation, as per the aforesaid order shall be released in favour of the guardian of the claimant, immediately on deposit by both the Insurers;

The statutory amount in deposit by both the Insurers in M.F.A. No. 10807/2007 and M.F.A. No. 8321/2008 shall be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.