

(2015) 08 KAR CK 0249

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7188 of 2012 (MV)

Varalakshmi and Others

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Citation : (2015) ILR (Kar) 4418

Hon'ble Judges : N.K. Patil, J;P.S. Dinesh Kumar, J

Bench : Division Bench

Advocate : K.T. Gurudeva Prasad, for the Appellant; A.N. Krishna Swamy,
Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J—This appeal by the claimants is directed against the judgment and award dated 20th March 2012, passed in MVC No. 6147/2010, by the Chief Judge and Member, Principal Motor Accident Claims Tribunal, Court of Small Causes, Bangalore, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 26,45,144/- awarded in favour of the claimants, after deducting 60% towards contributory negligence on the part of the deceased, as against their claim for Rs. 1,00,00,000/-, is inadequate and that the contributory negligence fixed by the Tribunal at 60% on the part of the deceased driver of the Car is on the higher side and liable to be reduced substantially.

2. The facts of the case as stated in the claim petition are, that at about 3:00 P.M., on the ill-fated day, i.e. on 11-09-2010, when the deceased B. Umapathi was driving the Car bearing Registration No. KA-50/M-825 slowly and Carefully, from Chitradurga towards Hospet, near Kanamakatte village, Huchavanahallikere on NH-13, all of a sudden, a Lorry bearing Registration No. KA-01/B-8723 came at a high speed, in a rash and negligent manner and dashed against the Car, in which the deceased B. Umapathi was driving Due to the impact, deceased B. Umapathi, being the driver of the Car was thrown out from the Car and he

sustained grievous injuries to his vital organs and as a result, died on the spot.

3. It is the case of the claimants that, the deceased was aged about 45 years, a Software Engineer, working as a Project Manager, earning a sum of Rs. 75,000/- per month and also the only earning member in the family and on account of his death, the claimants who are none other than the wife and two minor children are in deep financial crisis apart from losing the love and affection and social and moral support and therefore, they have to be compensated reasonably.

4. On account of the death of the deceased B. Umapathi, the claimants filed the claim petition before the Tribunal, seeking compensation of a sum of Rs. 1,00,00,000/- against the respondents and the said claim petition was numbered as M.V.C. No. 6147/2010. The said claim petition had come up for consideration before the Tribunal on 20th March, 2012. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding compensation of a sum of Rs. 26,45,144/-, after deducting 60% towards contributory negligence on the part of the deceased driver of the Car, B. Umapathi, with 6% interest per annum, from the date of petition till the date of deposit. Being aggrieved by the 60% contributory negligence fixed on the part of the deceased driver of the Car bearing Registration No. KA-50/M-825 and also the quantum of compensation, the claimants are in appeal before this Court, seeking enhancement of compensation and also to set aside the 60% contributory negligence fixed on the part of the deceased driver of Car or at least to reduce the contributory negligence substantially.

5. We have heard the learned counsel appearing for claimants and also the learned counsel appearing for first respondent/Insurer, gone through the grounds urged in the memorandum of appeal Carefully and perused the impugned judgment and award passed by Tribunal, including the original records placed before us.

6. Shri. K.T. Gurudeva Prasad, learned counsel appearing for claimants, at the outset submitted regarding contributory negligence that the Tribunal grossly erred in fixing the contributory negligence in the ratio of 60:40 respectively on the part of the deceased driver of the Car and driver of the Lorry. The same is disproportionate and contrary to the oral and documentary evidence available on file. He drew our specific attention to the oral evidence of PW2 and documentary evidence at Exs. P1 to P4 and Ex. P7, i.e. FIR, spot mahazar, spot sketch and charge sheet and submitted that the jurisdictional Police, after due investigation has filed the charge sheet against the driver of Lorry insured with the first respondent/Insurer, which is a conclusive proof to indicate that the driver of the Lorry was solely responsible for the occurrence of accident. He submitted that the reasoning given by the Tribunal that mere filing of charge sheet is not conclusive proof and that the evidence placed before it is to be considered in its entirety, independently, is contrary to the contents of FIR, spot mahazar, spot sketch. All these documentary evidence goes to show that the driver of the Lorry

has come in a rash and negligent manner and caused the accident, resulting in death of the driver of the Car and also severe damages to both the vehicles, as per Ex. P4, IMV Report. This documentary evidence clearly establishes beyond reasonable doubt that there is entire or more negligence on the part of the driver of the Lorry rather than the deceased driver of the Car. All these aspects of the matter have not been properly looked into or considered or appreciated by Tribunal, while apportioning the contributory negligence between the drivers of both the vehicles. Therefore, the impugned judgment and award passed by Tribunal insofar as it relates to fixing 60% contributory negligence on the part of the deceased driver of the Car is liable to be set aside or at least reduced substantially, by modifying the same.

Regarding quantum of compensation awarded by Tribunal, he submitted that the deceased was aged about 45 years and a Software Engineer, working as a Project Manager in a reputed Company, drawing salary of Rs. 75,000/- per month and was regularly filing the income tax returns. To substantiate the said income, the claimants have produced number of documents such as bank statement of the deceased, income tax returns, salary slips and also examined the Manager of the firm, where the deceased was working. In spite of the same, the Tribunal grossly erred in assessing the income of the deceased at only Rs. 52,483/- per month. The same is liable to be re-assessed. Further, he submitted that in the light of the law laid down by the Hon'ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487, the Tribunal ought to have added 30% towards future prospects, as the deceased was aged between 40 years and 50 years and employed in a secured job. Therefore, he submitted that reasonable income may be re-assessed and 30% may be added towards future prospects, for calculating loss of dependency, by adopting proper multiplier. Further, since the dependents at present, are three in number, i.e. wife and two minor children, 1/3rd may be deducted towards the personal and living expenses of the deceased and reasonable compensation be awarded towards loss of dependency.

He also submitted that the compensation awarded by Tribunal towards conventional heads is also on the lower side, for the reason that, in view of the judgment of the Hon'ble Apex Court and this Court in catena of decisions, the claimants are entitled to higher compensation towards conventional heads. Therefore, reasonable compensation be enhanced towards conventional heads, considering the age and status of the claimants and also the year of accident.

He further submitted that the rate of interest awarded by Tribunal at 6% per annum is also on the lower side for the reason that the accident has occurred during September, 2010. In the light of the decision of the Apex Court and this Court in hosts of judgments, rate of interest may be enhanced to at least 8% to 10% per annum.

7. As against this, Shri A.N. Krishna Swamy, learned counsel appearing for first respondent/Insurer vehemently submitted that the Tribunal committed grave error, resulting in serious miscarriage of justice, in fixing contributory negligence in the ratio of 60:40, i.e. 60% on the part of the deceased driver of Car bearing Registration No. KA-50/M-825 and 40% on the part of the driver of Lorry bearing Registration No. KA-01/B-8723, when in fact, the deceased driver of the said Car contributed much more to the occurrence of accident. To substantiate the same, he drew our specific attention to the documentary evidence at Exs. P1 to P4 and Ex. P7, i.e. FIR, spot Mahazar, spot sketch, IMV report and charge sheet and submitted that if the contents of all these documents are taken into consideration, then, in fact, there is much more negligence on the part of the deceased driver of the Car. The nature of damage caused to both the vehicles proves beyond all reasonable doubts that the deceased driver of the Car was coming at a high speed, in a rash and negligent manner and dashed against the front right portion of the Lorry and caused the accident. Thus, the nature of damage caused to both the vehicles clearly indicates that, the deceased Driver of the Car was more negligent in driving the vehicle and contributed more to the occurrence of accident. However, the Tribunal, after critical evaluation of the oral and documentary evidence available on file has recorded a specific finding of fact at paragraph 9 of its judgment, fixing the contributory negligence on the part of the deceased driver of the Car and driver of Lorry in the ratio of 60:40. The reasoning given by Tribunal is well founded and interference in the same is not called for.

Regarding quantum of compensation awarded by Tribunal, he submitted that, the Tribunal, after critical evaluation of the oral and documentary evidence available on file and taking into consideration all the relevant aspects, has rightly assessed the income of the deceased and awarded just and reasonable compensation towards loss of dependency as also under conventional heads. The same is just and proper and does not call for interference nor the claimants have made out a good case for enhancement of compensation.

8. After hearing the rival contentions of both 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 two appeals are:

"I] Whether the Tribunal is justified in fixing the contributory negligence at 60% on the part of the deceased driver of the Car bearing Registration No. KA-50/M-825 and 40% on the part of the Driver of the Lorry bearing Registration No. KA-01/B-8723?

II] Whether the quantum of compensation awarded by Tribunal for the death of the deceased B. Umapathi, is just and reasonable?"

9. Re-Point I] : The undisputed facts of the case in hand are, occurrence of accident at about 3:00 P.M. on 11-09-2010 and the resultant death of deceased

B. Umapathi.

10. After perusal of the oral and documentary evidence, particularly, Ex. P1- FIR, it is stated that the Car was proceeding from Chitradurga towards Hospet whereas the Lorry came in a rash and negligent manner from opposite direction and dashed against the Car with a great speed and on account of force, the Car capsized and the deceased B. Umapathi, the driver of the Car died on the spot in the Car itself. Ex. P.2 is the spot panchanama and Ex. P.3 is the spot sketch. From the spot sketch it is evident that the accident occurred on a straight road. The Lorry was proceeding from North to South direction whereas the Car was proceeding from South to North direction i.e., in opposite directions. The sketch shows that the Lorry was on its correct side whereas the Car went towards the right side and dashed against the Lorry to the front right side and to the diesel tank. Ex. P.4 is the IMV report wherein the damage caused to the Lorry bearing Registration No. KA-01/B-8723 is shown as under:

- "1. Front right side shape damaged.
- 2. Front right side headlight indicator broken.
- 3. Right side bumper damaged.
- 4. Diesel tank damaged."

The damage caused to the Car bearing No. KA-50/M-825 is shown as under:

- "1. Front bonnet damaged.
- 2. Radius damaged.
- 3. Bumper damaged.
- 4. Front right side mudguard damaged.
- 5. Right side door damaged.
- 6. Top body damaged.
- 7. Dash board damaged.
- 8. Steering bend.
- 9. Front head light indicator broken.
- 10. Both side mirror damaged."

Thus it is seen from Ex. P.4 the IMV report that the front right side of both the vehicles was damaged in the road traffic accident in question. Ex. P.5 is the Post Mortem examination report wherein it is opined that the death is due to neurogenic shock as a result of injury to vital organ like brain. Ex. P.7 is the Charge Sheet filed against the driver of the Lorry.

- 11. As against the oral and documentary evidence placed on record by the

claimants, in order to prove the negligence on the part of the deceased, the Insurer has examined the driver of the Lorry, who, in turn has stated that while he was driving the Lorry on aforesaid date and time of accident in question, the Car in question came with a high speed and to the extreme right side of the road and all of a sudden the driver of the said Car has steered his vehicle to the extreme right side in order to overtake the Canter Lorry and violently dashed against the Lorry which he was driving to its correct side to front right side and also the diesel tank and as a result, the Car was toppled. He has further stated that due to the impact, the front axle of the Lorry was cut and as a result, the front two wheels of the Lorry came out. In the cross examination, he has admitted that compliant came to be lodged against him and that after the accident, he along with cleaner ran away from the spot without informing the Police.

12. It is the specific case of the claimants that, the accident and the resultant death of deceased B. Umapathi is on account of rash and negligent driving of the Lorry by its driver. On the other hand it is the case of the Insurer, particularly the driver of the Lorry, that the accident occurred on account of negligence of the deceased driver of the Car. If we go by the spot sketch, which is relied upon by the claimants, it is evident that the Car driver was also negligent since he came to the wrong side of the road and dashed against front right side of the Lorry and diesel tank. Thus it is a case of collusion between the two vehicles, namely Car and Lorry. Though the driver of the Lorry has been examined he has not stated anything about the precaution taken by him in order to avoid the accident. Moreover, it can be seen that the Police, after investigation have filed Charge Sheet against the driver of the Lorry. But mere filing of Charge Sheet by the Police against the driver of the Lorry does not mean that the driver of the Lorry was solely responsible for the occurrence of accident. It has to be considered on the basis of the evidence placed before the Court in its entirety and independently. Therefore, upon going through the evidence placed on record by both the parties, the Tribunal observed that the accident has occurred on account of negligence of the drivers of both the vehicles i.e., the driver of the Lorry as well the driver of the Car and fixed the negligence at 60% on the part of the deceased driver of the Car and 40% on the part of the driver of the Lorry. The same in our opinion is not proper, for the reason that, admittedly, the driver of the Lorry, either in his examination or cross examination, has not stated any thing about the due precaution taken by him to avoid the accident. Further, it can be seen that the Lorry being a heavier vehicle when compared to the Car, the driver of the Lorry ought to have been more vigilant and taken due care and caution at least to avoid the accident. Further, admittedly, as per the documentary evidence referred supra, the driver of the Car was very rash and negligent in driving the vehicle and come to the wrong side of the road and hit the Lorry. Thus, we are of the firm opinion that, the drivers of both the vehicles have contributed equally to the occurrence of accident. Hence, we intend to modify the ratio fixed in the ratio of 60:40. Having regard to the totality of the

case on hand, we hereby re-fix the contributory negligence at 50% each on the part of the deceased driver of the car and driver of the Lorry, to safeguard the interest of both the parties and to meet the ends of justice. Accordingly, we answer point No. 1] in the "Negative".

13. Re-Point II] : So far as quantum of compensation awarded by Tribunal, it can be seen that, occurrence of accident at about 3:00 P.M. on 11-09-2010 and the resultant death of deceased B. Umapathi, the husband of first claimant and father of claimants 2 and 3 and son of claimant No. 4 are not in dispute.

14. After critical evaluation of the entire material available on file, it emerges that the compensation awarded by Tribunal for the death of the deceased B. Umapathi is on the lower side and liable to be re-determined. Therefore, having regard to the facts and circumstances of the case, we answer point No. II] also in the "Negative" and award the compensation as follows:

15. It is not in dispute that, the deceased B. Umapathi was aged about 45 years as on the date of accident and was a Software Engineer, working in a reputed Company, earning Rs. 75,000/- per month. It is further not disputed that he was regularly filing the returns and an income tax assessee. The claimants are none other than the wife, aged about 35 years, minor children aged about 15 years and 9 years and aged mother, senior citizen aged about 72 years, at the time of accident. To substantiate the income, the claimants have produced the salary slips, income tax returns, Form No. 16, bank Statements, salary Certificate, etc. The Tribunal, after proper evaluation of oral and documentary evidence available on file, particularly the salary slips, income tax returns, bank statements, etc. has assessed the monthly income of the deceased at Rs. 53,500/-, after deducting income tax and professional tax. The same being just and proper, is accepted. However, the Tribunal slipped into an error in not adding 30% towards future prospects of the deceased. Admittedly, the age of the deceased was 45 years and working as a Project Manager/In-charge Engineer in a reputed Company, in a secured job. Therefore, in the light of the judgment of the Hon'ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , 30% has to be added to the said income. Accordingly, if 30% (i.e. Rs. 16,050/-) is added to Rs. 53,500/-, the total monthly income comes to Rs. 69,550/-. Out of this, we have to deduct 1/4th towards the personal and living expenses of deceased. But, considering the fact that the fourth claimant, the mother of the deceased is dead, we are inclined to deduct 1/3rd towards the personal and living expenses of deceased as against 1/4th deducted by Tribunal. Accordingly, if 1/3rd (i.e. Rs. 23,183/-) is deducted from Rs. 69,550/-, the net income comes of Rs. 46,367/- per month. Further, as the deceased was aged about 45 years at the time of accident, the appropriate multiplier applicable is T4", in view of the judgment of the Apex Court in Sarla Verma's case (2009 ACJ 1298), as rightly adopted by

Tribunal. Thus, the compensation towards loss of dependency would work out to Rs. 77,89,656/- (i.e. Rs. 46,367/- x 12 x T4") as against Rs. 66,12,858/- awarded by Tribunal.

16. Further, so far as compensation awarded towards conventional heads is concerned, we are of the view that the compensation awarded by Tribunal under all the conventional heads is on the lower side. Further, it can be seen that the Tribunal has failed to award any compensation towards loss of love and affection. The dependents are wife and two minor children. The wife has lost her soul-mate and the children have lost filial love and affection, special guidance, inspiration and social and moral support of their father. Therefore, considering the facts and circumstances of the case and following the judgment of the Hon'ble Apex Court and this Court in catena of decisions, we award a sum of Rs. 50,000/- towards loss of consortium, as against Rs. 10,000/-; Rs. 25,000/- towards loss of estate as against Rs. 10,000/-; Rs. 25,000/- towards transportation of dead body and funeral expenses as against Rs. 10,000/- and Rs. 75,000/- towards loss of love and affection at the rate of Rs. 25,000/- to each claimant, as the Tribunal has not awarded any compensation under this head. Thus, the total compensation works out to Rs. 79,64,656/- as against Rs. 66,42,000/- awarded by Tribunal.

17. As per the contributory negligence re-fixed by this Court as above, in the ratio of 50:50, while answering point No. 1] above, the claimants are entitled to only 50% of the total compensation. Accordingly, 50% of Rs. 79,64,656/- works out to Rs. 39,82,328/- as against Rs. 26,45,144/- awarded by Tribunal, after deducting 50%. Thus, there would be enhancement of compensation by a sum of Rs. 13,37,184/-.

18. As rightly pointed out by learned counsel appearing for claimants, the rate of interest awarded by Tribunal at 6% is on the lower side. Therefore, in the light of the catena of decisions of the Hon'ble Apex Court and this Court, we award rate of interest at 8% per annum, on the enhanced compensation, from the date of petition, till the date of realization.

19. In the light of the facts and circumstances of the case, as stated above, the appeal filed by the claimants is allowed in part.

The impugned judgment and award dated 20th March 2012, passed in MVC No. 6147/2010, by the Chief Judge and Member, Principal Motor Accident Claims Tribunal, Court of Small Causes, Bangalore, is hereby modified.

The contributory negligence fixed on the part of the driver of the Car bearing No. KA-50/M-825 and the driver of the Lorry bearing Registration No. KA-01/B-8723 in the ratio of 60:40 is hereby set aside and the same is hereby modified, by re-fixing contributory negligence in the ratio of 50:50, i.e. 50% on the part of the drivers of both the Car and Lorry, to meet the ends of justice.

Upon re-determination of compensation by this Court, the claimants would be entitled to total compensation of a sum of Rs. 79,64,656/- as against Rs.

66,42,000/- awarded by Tribunal;

As per the contributory negligence re-fixed by this Court, while answering Point No. 1] above, i.e. in the ratio of 50:50, the claimants are entitled to only 50% of the total compensation;

Accordingly, 50% of Rs. 79,64,656/- works out to Rs. 39,82,328/- as against Rs. 26,45,144/- awarded by Tribunal. Thus, there would be enhancement of compensation by a sum of Rs. 13,37,184/-;

The first respondent/Insurer is directed to deposit the remaining compensation, along with 8% interest per annum on the enhanced compensation of Rs. 13,37,184/- from the date of petition till the date of realization, after deducting the amount, if any, already deposited by it, within four weeks from the date of receipt of copy of the judgment.

Out of the enhanced compensation of a sum of Rs. 13,37,184/-, a sum of Rs. 5,00,000/- with proportionate interest shall be invested in Fixed Deposit, in the name of the first claimant/wife of deceased, in any nationalized/scheduled/Grameena Bank, for a period of ten years and renewable for ten years, with liberty reserved to her to withdraw the periodical interest;

A sum of Rs. 3,00,000/- with proportionate interest shall be invested in Fixed Deposit, in the name of the second claimant/daughter of deceased, in any nationalized/scheduled/Grameena Bank, for a period of ten years and renewable for ten years, with liberty reserved to her to withdraw the periodical interest;

A sum of Rs. 3,00,000/- with proportionate interest shall be invested in fixed deposit, in the name of the third claimant/minor daughter of deceased, in any Nationalized/Scheduled/Grameena Bank, till she attains the age of 30 years, with liberty reserved to the natural guardian/mother/claimant No. 1 to receive the periodical interest till she attains the age of 21 years, for the welfare of the minor daughter and from 22 years to 30 years, the third claimant is entitled to receive the interest periodically;

Remaining Rs. 2,37,184/- with proportionate interest shall be released in favour of the first claimant/wife of deceased, immediately on deposit by the first respondent/Insurer;

The apportionment and the manner of disbursement of compensation ordered by Tribunal in respect of the compensation awarded by it remains unaltered;

Office to draw award, accordingly.