

CariappA. L.a and Another Vs. Abdul Rasheed and Others

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Court : Karnataka

Decided On : Mar-04-2014

Judge : N.K. Patil & Pradeep.D.Waingankar

Appeal No. : M.F.A. No. 5687 of 2011 (MV) C/W. M.F.A. No. 4893 of 2010 (MV)

Appellant : CariappA. L.a and Another

Respondent : Abdul Rasheed and Others

Judgement :

(Prayer: This MFA is filed U/S 173(1) of MV Act against the Judgment and Award dated: 22/12/2009 passed in MVC No. 6895/2007 on the file of the XIII Additional Small Causes Judge, Member, Motor Accident Claims Tribunal, Court of Small Causes, Bangalore (SCCH-15), partly allowing the claim petition for compensation and seeking enhancement of compensation.)

(Prayer: This MFA is filed U/S 173(1) of MV Act against the Judgment and Award dated: 22/12/2009 passed in MVC No. 6895/2007 on the file of the XIII Additional Small Causes Judge, Member, Motor Accident Claims Tribunal, Court of Small Causes, Bangalore (SCCH-15), awarding a compensation of Rs.2,42,800/- with interest at 6% p.a. from the date of petition till deposit in Tribunal.)

1. Though these appeals are posted for Admission, they are taken up for final disposal with the consent of the learned counsel for the parties.

2. These two appeals respectively by the injured claimant and the insurer - M/s. National Insurance Company Limited, are directed against the same common judgment and award dated 22nd December 2009, passed in MVC No. 6895/2007, by the XIII Additional Small Causes Judge, Member, Motor Accident Claims Tribunal, Court of Small Causes, Bangalore (SCCH-15), (for short, 'Tribunal').

3. While the claimant has filed the appeal, seeking enhancement of compensation on the ground that the compensation of Rs.2,42,800/- awarded by Tribunal is on the lower side; the Insurer has filed the appeal, seeking to fix reasonable negligence on the part of the driver of the Tempo Traveller also.

4. The facts of the case as stated in the claim petition are that, at about 10-00 A.M., on the ill-fated day, i.e. on 25-10-2006, when the injured claimant along with others was travelling in a Tempo Traveller bearing Registration No.KA-OI/B-4996 insured with M/s. New India Assurance Company, near Thimallipalya gate, near Yellapura gate, NH-206, at that time, a Lorry bearing Registration No.KA-16/238 insured with M/s. National Insurance Company Limited, came at a high speed, in a rash and negligent manner and dashed against the Tempo Traveller. Due to the impact, some of the inmates of the Tempo Traveller died and some were severely injured including the injured claimant herein. Immediately, the injured claimant was shifted to Government Hospital, Gubbi and later to Abhaya Hospital and thereafter he took treatment in various other Hospitals.

5. On account of the grievous injuries sustained in the road traffic accident, the injured claimant filed the claim petition before the Tribunal, seeking compensation of a sum of Rs.10,00,000/- against the owner and Insurer of both the vehicles, viz. Tempo Traveller and also the Lorry and the same was numbered as M.V.C.No.6895/2007. The said claim petition had come up for consideration before the Tribunal on 22nd December, 2009. The Tribunal, clubbed all the cases arising out of the same accident and 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.2,42,800/-, with 6% interest per annum. Not being satisfied with the compensation awarded by Tribunal, the injured claimant has filed the appeal, seeking enhancement of

compensation and being aggrieved by the impugned judgment and award passed by Tribunal in not fixing the reasonable negligence on the part of the driver of the Tempo Traveller bearing Registration NO.KA-0L/B-4996, the Insurer is in appeal before this Court, seeking to fix reasonable percentage of negligence on the part of driver of the Tempo Traveller also for the occurrence of road traffic accident, to meet the ends of justice.

6. We have heard Shri. M.R. Kumara Swamy, learned counsel appearing for injured claimant and Shri. A.N. Krishna Swamy, learned counsel appearing for M/s. National Insurance Company Ltd., and Shri.R. Jaiprakash, learned counsel appearing for M/s. New India Assurance Company Ltd., gone through the grounds urged in the memorandum of appeals filed by both of them carefully and perused the impugned judgment and award passed by Tribunal, including the original records placed before us.

7. Shri. M.R. Kumara Swamy, learned counsel appearing for injured claimant vehemently submitted that, the Tribunal grossly erred in not awarding reasonable compensation towards injury, pain and sufferings, loss of income during laid up period, and loss of amenities, discomfort and unhappiness, on account of the grievous injuries sustained in the road traffic accident and further erred in not assessing the reasonable income of the claimant. To substantiate his submission, he vehemently submitted that, on account of the grievous injuries sustained in the road traffic accident, the injured claimant took treatment in various Hospitals for a total period of nearly 21 days and underwent two surgeries and that he was working as Operator (Artillery) in Defence at Secunderabad, earning Rs. 9,000/- per month and because of the said accident, he is not in a position to do any work as before. Therefore, he submitted that reasonable enhancement may be made by modifying the impugned judgment and award passed by Tribunal.

8. Shri. A.N. Krishna Swamy, learned counsel appearing for Insurer- M/s. National Insurance Company Limited, vehemently submits that the Tribunal committed grave error and material irregularity, resulting in serious miscarriage of justice, in fixing entire negligence on the part of the driver of Lorry bearing Registration No.KA-16/238 insured with M/s. National Insurance Company Limited and not

fixing any liability on the part of the driver of the Tempo Traveller bearing registration No.KA-01/B-4996 insured with M/s. New India Assurance Company, when in fact, the drivers of both the vehicles contributed to the occurrence of accident. To substantiate the same, he relied upon the oral evidence of PWs 1 to 3, who are the eye witnesses and inmates of the Tempo Traveller, who have stated in unequivocal terms that, the accident has taken place on account of negligence on the part of the drivers of both the vehicles. The said fact is further evidenced from the sketch at Ex.P5, which establishes beyond all reasonable doubts that on account of negligence on the part of drivers of both the vehicles, the accident occurred. Therefore, he submitted that, the Tribunal has failed to take into consideration all these aspects and contrary to the oral and documentary evidence available on file, fixed the entire negligence on the part of the driver of Lorry bearing Registration No.KA-16/238, without fixing any negligence on the part of the driver of Tempo Traveller bearing Registration No.KA-01/B-4996. The same is liable to be modified by re-fixing the contributory negligence in the ratio of at least 55:45, to meet the ends of justice, in view of the categorical admission of PWs 1 to 3 in their oral evidence and also during their cross examination.

9. As against this, Shri.R. Jaiprakash, learned counsel appearing on behalf of M/s. New India Assurance company Limited vehemently submitted that the Tribunal, after due consideration of the entire material available on file including the oral and documentary evidence adduced by the parties, is justified in fastening the entire liability on the driver, owner and insurer of M/s. National Insurance Company Limited and hence, interference in the impugned judgment and award passed by Tribunal is uncalled for.

10. After hearing the rival contentions of all the three 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 appeals are:

1] Whether the Tribunal is justified in fixing the entire negligence on the part of the driver of Lorry bearing Registration No.KA-16/238, without fixing any negligence on the part of the driver of Tempo Traveller bearing Registration No.KA-01/B-4996?

II] Whether the quantum of compensation awarded by Tribunal is just and reasonable?

11. Re-Point II : Occurrence of accident and the resultant injuries sustained by the injured claimant on account of the road traffic accident are not in dispute. It is further not in dispute that the injured claimant was aged about 27 years, hale and healthy prior to the accident. After critical evaluation of the oral evidence of PW3, it can be seen that, the said witness has stated in unequivocal terms that the accident has taken place in the middle of the road and the accident is head on collusion between the two vehicles, which is corroborated by another oral evidence of PW1. But, the same is disbelieved and rejected by the Tribunal, on the sole ground that, the Insurer- M/s. National Insurance Company has failed to prove that, the accident has occurred due to negligence of driver of Tempo Traveller. But, after careful perusal of the documentary evidence, such as sketch of the spot of the accident, mahazar, panchanama, etc, coupled with the oral evidence of PWs 1 to 3, we are of the firm opinion that the driver of the Lorry contributed more to the occurrence of accident than the driver of Tempo Traveller. Thus, the drivers of both the vehicles contributed to the accident. When these clinching material were available on file, the Tribunal ought to have fixed reasonable contributory negligence on the part of driver of the Tempo Traveller also. Further, as can be seen from the records, the drivers of both the vehicles contributed to the accident and in fact, the driver of the Lorry contributed more to the accident, considering the fact that, the police after due investigation, have filed the charge sheet against the driver of Lorry, coupled with the documentary evidence, such as sketch, panchanama, mahazar, etc. Therefore, having regard to the totality of the case on hand and after re-appreciation of the oral and documentary evidence available on file, we answer the point No. 1 in the 'Negative' and hold that the drivers of both the vehicles contributed to the occurrence of accident and re-fix the contributory negligence in the ratio of 80:20, i.e. 80% on the part of the driver of Lorry bearing Registration No.KA-16/238 and 20% on the part of the driver of Tempo Traveller bearing Registration No.KA-01/B-4996, to safeguard the interest of both parties and to meet the ends of justice, as against the entire negligence fixed by the Tribunal on the part of the driver of Lorry. Therefore, the submission of the learned counsel appearing for M/s. New

India Assurance Company that the Tribunal is justified in fastening the entire liability on M/s. National Insurance Company Limited, cannot be accepted and is hereby rejected at the threshold.

12. Re-Point III: So far as quantum of compensation awarded by Tribunal is concerned, occurrence of accident and the resultant injuries sustained by the injured claimant are not in dispute. It is also not in dispute that the injured claimant was aged about 27 years as on the date of accident and working as an Operator (Artillery) in Defence at Secunderabad, getting salary of Rs.9,000/- per month. It is further not disputed that he sustained fracture of orbit and zygoma right with enophthalmos. He took treatment in various Hospitals, namely, Abhaya Hospital, Commando Hospital and Sankara Nethralaya, Chennai, to undergo floor repair plus medpore. He was hospitalized for treatment of the said injuries on many occasions and also undergone two operations. The Doctor has opined that the injured claimant has sustained 40% disability. But, he has not examined the Doctor, who has assessed the said Disability. But, the fact remains that he has to suffer some percentage of disability for the rest of his life. Definitely, on account of the grievous injuries and the disability sustained, he would not be in a position to do his work as effectively as he was doing earlier to the accident. Further, for the purpose of awarding compensation towards loss of income during treatment period, we re-assess the monthly income of the injured claimant at Rs. 9,000/-, to meet the ends of justice. Therefore, considering the age, avocation, year of accident, nature of injuries sustained, nature and duration of treatment undergone, two surgeries undergone, disability assessed by Doctor, etc, we award a sum of Rs.1,00,000/- towards injury, pain and sufferings as against Rs.70,000/-; Rs. 54,000/- towards loss of income during treatment period, at the rate of Rs.9,000/- for a period of six months as against Rs.25,800/-; and Rs.80,000/- towards loss of amenities, discomfort and unhappiness on account of some percentage of disability suffered by injured claimant as against Rs.30,000/- awarded by Tribunal. However a sum of Rs.1,17,000/- awarded by Tribunal towards medical expenses including conveyance, nourishing food and attendant charges is just and proper and does not call for interference. Thus, the total compensation would work out to Rs.3,51,000/- as against Rs.2,42,800/- awarded by Tribunal and there would be enhancement of compensation by a sum of Rs.1,08,200/- with interest at 6% per

annum from the date of petition till the date of realization. Accordingly, we answer point No.III also in the 'Negative' and enhance the compensation awarded by Tribunal by Rs.1,08,200/-.

13. Further, as per the contributory negligence re-fixed by this Court in the ratio of 80:20, as above while answering point No.II, both the Insurers, i.e. M/s. National Insurance Company Limited and M/s. New India Assurance Company are liable to deposit the enhanced compensation as well as the compensation awarded by Tribunal with interest at 6% per annum, from the date of petition till the date of realization, in the ratio of 80:20 respectively.

14. In the light of the facts and circumstances of the case, as stated above, the appeals filed by the injured claimant as well as the Insurer are allowed in part.

The impugned common judgment and award dated 22nd December 2009, passed in MVC No. 6895/2007 by the XIII Additional Small Causes Judge, Member, Motor Accident Claims Tribunal, Court of Small Causes, Bangalore (SCCH-15), is hereby modified.

The entire negligence fixed on the driver of the Lorry bearing Registration No.KA-16/238 is hereby set aside;

The liability is hereby modified, by re- fixing the contributory negligence in the ratio of 80:20, i.e. 80% on the part of the driver of the Lorry, bearing Registration No.KA-16/238 and 20% on the part of the driver of the Tempo Traveller, bearing Registration No.KA- 01/B-4996, to meet the ends of justice.

The quantum of compensation awarded by Tribunal is also modified, awarding compensation of Rs.3,51,000/- as against Rs.2,42,800/- awarded by Tribunal and there would be enhancement of compensation by a sum of Rs. 1,08,200/- with interest at 6% per annum from the date of petition till the date of realization, excluding interest for the delayed period of 420 days in filing the appeal by the injured claimant;

Further, as per the contributory negligence re-fixed by this Court, as above, in the ratio of 80:20, both the Insurers, i.e. M/s. National Insurance Company Limited and

M/s. New India Assurance Company are directed to deposit the enhanced compensation as well as the compensation awarded by Tribunal with interest at 6% per annum,, in the ratio of 80:20, respectively, after deducting the amount, if any deposited, within four weeks from the date of receipt of a copy of this judgment, excluding interest for the delayed period of 420 days in filing the appeal by the injured claimant;

Out of the enhanced, compensation of a sum of Rs. 1,08,200/- with accrued interest, 50% shall be invested, in Fixed Deposit, in the name of the injured claimant in M.F.A.No.5687/2011, in any Nationalized/ Scheduled Bank, for a period of ten years, renewable for another ten years, with liberty reserved to him to withdraw the interest periodically;

Remaining 50% shall be released in favour of the injured claimant, immediately on deposit by both the Insurers;

The statutory amount in deposit by the Insurer in M.F.A.No.4893/2010 is directed to be transmitted to the jurisdictional Tribunal forthwith.

Office to draw award, accordingly.

Shri.A.N. Krishna Swamy and Shri.k. Jaiprakash are permitted to file their respective vakalaths on behalf of M/s.National Insurance Company Limited and M/s. New India Assurance Company, in M.F.A.No.5687/2011, within four weeks from today.

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