

Lalitha Vs. N Kedarnath

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Court : Karnataka

Decided On : Jun-08-2015

Judge : N.K.Patil and Rathnakala

Appeal No. : MFA 3056/2010

Appellant : Lalitha

Respondent : N Kedarnath

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE8H DAY OF JUNE, 2015 : PRESENT : THE HONBLE MR. JUSTICE N.K. PATIL AND THE HONBLE MRS. JUSTICE RATHNAKALA M.F.A.NO.3056/2010 (MV) C/W. M.F.A.NO.5455/ 2009 (MV) M.F.A.NO.3056 OF2010(MV) Between:

1. Lalitha, W/o. Late NDRS Bhaskar, Aged about 27 years.

2. N. Nikila, D/o. Late NDRS Bhaskar, Aged about 4 years. Minor, rep. by her mother, Natural guardian appellant No.1. Both R/at. No.203, 2nd Floor, Mahaveer Citadel, J.P. Nagar, 5th Phase, 24th Main, Bangalore-78. (By Shri. Keshava Kumar.B, for Smt. Sheela Krishna, Advocate) ... Appellants 2 And:

1.

2. 3. N.Kedarnath, S/o. N. Rama Subramanyam, Major, R/at. 13/86, Chagalamarri, Kurnool District. (Owner of the Hero Honda Splendor Bearing No.AP-21-H-5755) The New India Assurance Company Ltd., Represented by its Divisional Manager, Kurnool. Karnataka State Road Transport Corporation, Rep. by its Regional Manager, K.H.Road, Shanthinagar, Bangalore. (By Shri. Ravi.S.Samprathi, Advocate for R2; Shri. F.S. Dabali, Advocate for R3; Notice to R1 dispensed with v/o. dated 08/06/2015) ***** ... Respondents This MFA is filed U/S1731) of MV Act against the Judgment and Award dated:18/03/2009 passed in MVC No.2162/2007 on the file of the IX Additional Judge, Member Motor Accident Claims Tribunal, Court of Small Causes, Bangalore (SCCH-7), partly allowing the claim petition for compensation and seeking enhancement of compensation. 3 M.F.A.NO.5455 OF2009(MV) Between: Karnataka State Road Transport Corporation, (KSRTC) By its Managing Director, Now represented by its Chief Law Officer, Central offices, K.H.Road, Shanthinagar, Bangalore - 560 027. ... Appellant (By Shri. F.S. Dabali, Advocate) And:

1.

2. 3. N. Nikila, D/o.Late NDRS Bhaskar, Aged about 3 years, R/o.No.203, 2nd Floor, Mahaveer Citadel, J.P.Nagar, 5th Phase, 24th Main, Bangalore - 560 078. Minor represented by Her mother and natural guardian The 1st respondent. Lalitha, W/o. Late NDRS Bhaskar, Aged about 26 years. R/o.No.203, 2nd Floor, Mahaveer Citadel, J.P.Nagar, 5th Phase, 24th Main, Bangalore - 560 078. N. Kedarnath, S/o. N.Rama Subramanyam, 4. 4 Major, R/at. No.13/86, Chagalmarri, Kurnool District, Andhra Pradesh State. Pin 518553 (Owner of Hero Honda Splendor bearing registration No.AP21H5755 owner of The vehicle) The New India Assurance Company Ltd., Represented by its Divisional Manager, Kurnool, Kurnool District. Andhra Pradesh. .. Respondents (By Shri. Keshava Kumar.B, for Smt. Sheela Krishna, Advocate for C/R-1; R2 is minor, rep. by R1; Shri. Ravi.S.Samprathi, Advocate for R4; R3 served and unrepresented) **** This MFA is filed U/S1731) of MV Act against the Judgment and Award dated:

18. 03/2009 passed in MVC No.2162/2007 on the file of the IX Additional Judge, Member Motor Accident Claims Tribunal, Court of Small Causes, Bangalore

(SCCH-7), awarding a sum of `12,40,000/- with interest @ 6% p.a. from the date of petition till realization. These MFAs coming on for Orders, this day, N.K. PATIL. J., delivered the following:

5.

JUDGMENT

These two appeals respectively by the claimants and the Corporation are directed against the same judgment and award dated 18th March 2009, passed in MVC No.2162/2007, by the IX Additional Judge, Member, Motor Accident Claims Tribunal, Court of Small Causes, Bangalore (SCCH-7), (for short, Tribunal).

2. While the claimants have filed the appeal, seeking enhancement of compensation on the ground that compensation of `12,40,000/- awarded by Tribunal on account of the death of the deceased NDRS Bhaskar is on the lower side and the contributory negligence fixed at 50% on the part of the deceased rider of Hero Honda Splendor motor cycle is liable to be reduced, by modifying the impugned judgment and award passed by Tribunal, the Corporation has filed the appeal on the ground that, the Tribunal is not justified in fixing the contributory negligence at 50% on the part of the driver of the KSRTC Bus and the same is liable to be modified, by reducing the same. 6 3. The facts of the case as stated in the claim petition are that, at about 7-15 A.M., on the ill-fated day, i.e. on 29-03-2006, when the deceased NDRS Bhaskar was traveling on Hero Honda Splendor motor cycle bearing Registration No.AP-21/H-5755, to go to Basaveshwara circle from COD Office circle, near Dargah at Palace Road, the driver of the KSRTC Bus bearing Registration No.KA-01/F-6770 drove the same at a high speed, in a rash and negligent manner and dashed against the motor cycle of the deceased. As a result, the deceased NDRS Bhaskar sustained bleeding injuries and died on the spot.

4. The claimants herein are none other than the wife and minor daughter of deceased NDRS Bhaskar in the road traffic accident. It is the case of the claimants that, deceased was the only earning member in the family and on account of his untimely and unnatural death, the family is in total financial distress and is left with

no social and moral support and therefore, they have to be compensated reasonably, as the wife has to run the family single handedly and look after the minor child all alone. 7 5. On account of the death of the deceased NDRS Bhaskar in the road traffic accident, the claimants filed the claim petition before the Tribunal, seeking compensation of a sum of `1,72,05,000/- against the owner of Hero Honda splendor motor cycle, insurer of the KSRTC Bus and Corporation and the same was numbered as M.V.C.No.2162/2007. The said claim petition had come up for consideration before the Tribunal on 18th March, 2009. 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 `24,80,000/-, with 6% interest per annum, fixing negligence on the part of the deceased rider of the Hero Honda Splendor motor cycle and also the driver of the KSRTC Bus in the ratio of 50:50, from the date of petition till the date of deposit. Being aggrieved by the contributory negligence fixed on the part of the deceased rider of the Hero Honda Splendor motor cycle at 50%, on the ground that the same is on the higher side and the quantum of compensation awarded is on the lower side, the claimants are in appeal; and the 8 Corporation is in appeal before this Court, seeking to modify the negligence fixed by Tribunal on the part of the deceased rider of Hero Honda Splendor motor cycle and the driver of the KSRTC Bus, at least in the ratio of 75:25, i.e. 75% on the part of the deceased rider of the Hero Honda Splendor motor cycle and 25% on the part of the driver of the KSRTC Bus, to meet the ends of justice.

6. We have heard Shri. B. Keshava Kumar appearing for Smt. Sheela Krishna, learned counsel appearing for claimants and Shri. F.S. Dabali, learned counsel appearing for Corporation, gone through the grounds urged in the memorandum of appeals filed by claimants as well as Corporation and perused the impugned judgment and award passed by Tribunal, including the original records placed before us.

7. Learned counsel appearing for claimants vehemently submitted that, the Tribunal grossly erred in not awarding reasonable compensation towards loss of dependency, for the reason that, the Tribunal has assessed the income of the deceased 9 at `25,000/- in spite of there being a clear documentary evidence

produced by the claimants at Exs.P10 and P11. Further, he submitted that the Tribunal also erred in not taking into consideration the income tax returns filed by the deceased during his life time, while he was working as a Software Engineer in Hewlett Packard Global Software Ltd. He further submitted that the claimants are none other than the wife and minor daughter of deceased and he was the only earning member in the family. When such being the case, the Tribunal grossly erred in deducting 50% towards the personal and living expenses of the deceased instead of 1/3rd, as held by the Honble Apex Court and this Court in catena of decisions. Therefore, he vehemently submitted that the salary shown in the pay slips at Exs.P10 and P11 may be accepted and deducting 1/3rd towards the personal and living expenses and adopting the multiplier of 17 as the deceased was aged about 30 years, reasonable compensation be awarded towards loss of dependency and the impugned judgment and award passed by Tribunal be modified accordingly. 10 Further, he vehemently submitted that the Tribunal also erred in not awarding reasonable compensation towards conventional heads such as loss of consortium, loss of estate, loss of love and affection and transportation of dead body and funeral expenses since, as per the decision of the Honble Apex Court and this Court in hosts of judgments, the claimants are entitled to higher compensation under the said heads. Therefore, he vehemently submitted that reasonable enhancement may be made by modifying the impugned judgment and award passed by Tribunal. Regarding contributory negligence fixed on the part of the deceased rider of Hero Honda Splendor motor cycle, he vehemently submitted that fixing of 50% on the part of the deceased rider of Hero Honda Splendor motor cycle is on the higher side as the Tribunal itself has categorically stated that there is no negligence on the part of the deceased rider of Hero Honda Splendor motor cycle and that in order to avoid hitting the boy, who darted across the road suddenly and to save the life of the boy, he took a sudden right turn, resulting in the accident. 11 He further submitted that as per Ex.P4, spot Mahazar, the distance between the motor cycle hitting the boy and thereafter hitting the Bus is about 10 ft. and at a stage when the motor cycle hit the boy, the Bus was at a distance of 12 ft. away from the spot, where the deceased met with accident. Thus, the Bus was at a distance of 22 ft. away when the deceased tried to avoid hitting the boy who darted across the road suddenly and lost balance. Thus, the

driver of the KSRTC Bus which was coming from opposite direction, who witnessed deceased hitting the boy losing the balance and swerving to the eastern side, could have avoided the accident, provided he was diligent, driving slowly, carefully with due care and caution. Further, the spot mahazar reveals that KSRTC Bus moved to a distance of 15 ft. 10 inches after applying the brake as shown in the sketch map and thus the Bus came to a halt after covering a distance of 15 ft. 10 inch in all after the brake was applied. That itself suggests that the driver of the KSRTC Bus was driving the same at a high speed and hence he could not control the Bus, even after he saw the deceased hitting the boy, losing balance and moving towards eastern side. 12 Therefore, he vehemently submitted that the contributory negligence fixed on the part of the deceased rider of the Hero Honda Splendor motor cycle at 50% may be reduced, fixing higher contributory negligence on the part of the driver of the KSRTC Bus, being a heavy vehicle.

8. As against this, Shri. F.S. Dabali, learned counsel appearing for Corporation vehemently submits that, the Tribunal committed grave error and material irregularity, resulting in serious miscarriage of justice, in fixing contributory negligence in the ratio of 50:50, on the part of the rider of Hero Honda Splendor motor cycle and on the part of the driver of KSRTC Bus, when in fact, the deceased rider of the Hero Honda Splendor motor cycle contributed more to the occurrence of accident. To substantiate the said submission, he pointed out that the Bus was moving in a moderate speed on the correct direction, but the deceased rider of the Hero Honda Splendor motor cycle in order to avoid hitting a boy, lost control over his vehicle and fell on the wrong side of the road and obstructed the passing KSRTC Bus. 13 This aspect of the matter has not been considered nor appreciated by Tribunal. Therefore, he submitted that reasonable negligence may be fixed on the part of the deceased rider of Hero Honda Splendor motor cycle and KSRTC Bus, at least in the ratio of 75:25, i.e. 75% on the part of the deceased rider of Hero Honda Splendor motor cycle and 25% on the part of the driver of the KSRTC Bus, by modifying the negligence fixed by the Tribunal in the ratio of 50:50 on the part of the deceased rider of the Hero Honda Splendor motor cycle and KSRTC Bus. Further, he submitted that the quantum of compensation awarded by Tribunal towards loss of dependency is on the higher side and the same is disproportionate to the source of income of the deceased

and hence, the impugned judgment and award passed by Tribunal requires modification both regarding quantum of compensation and also negligence.

9. After hearing the rival contentions of the parties, after perusal of the impugned judgment and award passed by Tribunal, after going through the grounds urged in the memorandum of 14 appeal filed by claimants as well as Corporation 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 in the ratio of 50:50 on the part of the deceased rider of Hero Honda Splendor motor cycle and driver of KSRTC Bus?. II]. Whether the quantum of compensation awarded by Tribunal is just and reasonable?.

10. Re-Point I]. : Occurrence of accident and the resultant death of the deceased NDRS Bhaskar in the road traffic accident that occurred between the two vehicles, i.e. Hero Honda Splendor motor cycle and KSRTC Bus are not in dispute. It is also not in dispute that the claimants are none other than the wife and a minor child, aged about 4 years at the time of accident.

11. After careful perusal of the reasoning given by Tribunal, it can be seen that the FIR and complaint marked at 15 Ex.R.2 discloses that a boy was trying to cross the road, deceased hit the boy, lost balance went further a little distance and hit the right portion of the KSRTC Bus near the rear wheel and thereby met with accident. Ex.R.3 B report discloses that the deceased while trying to avoid the accident to a pedestrian boy who suddenly darted across the road, lost balance as the left portion of the motor cycle hit the boy, went ahead and came beneath the right side wheel of the KSRTC Bus. The contents of the complaint are the facts narrated by the complainant and the contents of the B report are the conclusion arrived at by the Police after completion of investigation.

12. Further, it can be seen that, RW-1, the driver of the offending KSRTC Bus admitted in his cross-examination that the boy came across the road. Ex.R.2 and Ex.R.3 also reveals that a boy came across the road and deceased tried to avoid hitting the boy, lost balance and went ahead dashed to a KSRTC Bus which came from opposite side. These facts are not in dispute.

13. Ex.P.2 Panchanama and Ex.P.4 spot mahazar reveal that the distance between the motor cycle hitting the boy and 16 thereafter hitting the Bus is about 10 feet. At the moment when the motor cycle hit the boy, the Bus was at a distance of 12 feet away from the spot, where the deceased met with an accident. Thus, the Bus was at a distance of 22 feet away when the deceased tried to avoid hitting the boy who darted across the road suddenly and lost balance. Thus, the driver of the KSRTC Bus which was coming from opposite side who witnessed deceased hitting the boy losing the balance and swerving to the eastern side, could have avoided accident, provided he was diligent, driving slowly, carefully with precaution. The spot mahazar reveals that KSRTC Bus moved to a distance of 15 feet 10 inches after applying the brake as shown in the sketch map. Thus, the Bus came to a halt after covering the distance of 15 feet 10 inch in all after the brake was applied. Admittedly the road is Palace road, a busy one and a two way road. If at all the driver of KSRTC Bus was driving slowly, carefully and cautiously, the driver of the KSRTC Bus could not have dragged to a distance of 15 feet 10 inches after the brake was applied. That itself suggests that the driver of the KSRTC Bus was driving the Bus at a high speed and as such he 17 could not control the Bus, even after he saw the deceased hitting the boy, lost balance and moving towards eastern side. The driver of the KSRTC Bus, being a heavy vehicle, ought to have been little cautious while driving the Bus.

14. Further, it can be seen that the accident spot is situated almost in the middle of the road. Thus, it means that the KSRTC Bus was moving in the middle of the road. There is 17 feet wide road on the left side of the accident spot. The driver of the KSRTC Bus could have avoided the accident by swerving to the left side. It appears that driver of the KSRTC Bus in the process of overtaking other vehicles came to the middle of the road. Ex.P.4 reveals that deceased was proceeding on his motor cycle in the proper portion i.e., in the left portion of the road. The deceased tried to avoid hitting the boy who darted across the road suddenly. An effort made by the deceased to save the life of the boy who darted across the road suddenly, has resulted into unfortunate accident taking away the life of the deceased himself. Therefore, it cannot be held that legal representatives of the 18 deceased are not entitled to any compensation because the deceased tried to avoid hitting a boy and met with his own death.

15. The said reasoning given by Tribunal is after critical evaluation of the oral and documentary evidence available on file. Hence, the same is just and proper and does not call for interference. Therefore, we hold that the reasoning given by the Tribunal for fixing 50% contributory negligence each on the part of deceased rider of Hero Honda Splendor motor cycle and the driver of the KSRTC Bus is just and proper and does not warrant interference and we accordingly, confirm the same and answer point No.1]. in the affirmative.

16. Re-Point II]. : So far as quantum of compensation awarded by Tribunal is concerned, occurrence of accident and the resultant death of deceased NDRS Bhaskar in the said accident are not in dispute. It is also not in dispute that the claimants are none other than the wife aged about 24 years and daughter aged about one year at the time of filing the claim petition and was in the womb at the time of accident. It is further not disputed that the deceased was aged about 30 years as on the date of accident 19 and working as a Senior Software Engineer in Hewlett Packard Global Software Limited, drawing gross salary of `47,250/- per month as per Exs.P10 and 11. Salary slips and also filed income tax returns during his life time.

17. After microscopic evaluation of the original records available on file, including the salary slips produced at Exs.P10 P11, and as per the statement produced by the claimants, the annual income of the deceased is shown as `4,83,835/-. The same is accepted. From this, if a sum of `29,409/- is deducted towards income tax and professional tax, the net annual income comes to `4,54,426/-. Out of this, since the deceased was married and the dependents are two, 1/3rd is to be deducted towards the personal and living expenses of the deceased as per Sarla Verma's case (supra). Accordingly, if 1/3rd (i.e. `1,51,475/-) is deducted from it, the net income comes of `3,02,951/-. Further, as the deceased was aged about 30 years at the time of accident, the appropriate multiplier applicable is 17, in view of the aforesaid judgment, as against 16 adopted by Tribunal. Thus, the compensation towards loss of dependency would work out to 20 `51,50,167/- (i.e. `3,02,951/- x 17) as against `24,00,000/- awarded by Tribunal.

18. Further, so far as compensation awarded towards conventional heads, i.e. loss of consortium, loss of estate, loss of love and affection and transportation of dead body and funeral expenses is concerned, we are of the considered view that a sum of `80,000/- awarded under the conventional heads is on the lower side and as per the decision of the Apex Court and this Court in hosts of judgments and considering the age of the wife and minor child who was in the womb of its mother, at the time of death of the deceased and it has lost the filial love and affection of its father, we award a sum of `50,000/- towards loss of consortium, `50,000/- towards loss of love and affection, `25,000/- towards loss of estate and `25,000/- towards transportation of dead body and funeral expenses as against the compensation of `80,000/- awarded by Tribunal under the conventional heads. Thus the total compensation works out to `53,00,167/- as against `24,80,000/- awarded by Tribunal. Thus there would be enhancement of compensation by a sum of 21 `28,20,167/- with 6% interest per annum from the date of petition till the date of realization.

19. As per the contributory negligence fixed by the Tribunal and confirmed by this Court as above, in the ratio of 50:50, the claimants are entitled to only 50% of the enhanced compensation of `28,20,167/-, which comes to `14,10,083/-, with 6% interest per annum, from the date of petition, till the date of realization, excluding interest for the delayed period of 220 days in filing the appeal.

20. The Corporation is liable to deposit 50% of the enhanced compensation of `28,20,167/-, which comes to `14,10,083/- with 6% interest per annum from the date of petition till the date of realization, excluding interest for the delayed period of 220 days in filing the appeal.

21. In the light of the facts and circumstances of the case, as stated above, the appeal filed by claimants is allowed in part and the appeal filed by the Corporation is dismissed as devoid of merits. 22 The impugned judgment and award dated 18th March 2009, passed in MVC No.2162/2007, by the IX Additional Judge, Member Motor Accident Claims Tribunal, Court of Small Causes, Bangalore (SCCH-7), is hereby modified, only in so far as it relates to quantum of compensation awarded by Tribunal; The contributory negligence fixed by the

Tribunal on the part of the deceased rider of the Hero Honda Splendor motor cycle and the driver of the KSRTC Bus in the ratio of 50:50 is hereby confirmed; The total compensation awarded by Tribunal is modified, awarding compensation of `53,00,167/- as against `24,80,000/- awarded by Tribunal. Thus, there would be enhancement of compensation by a sum of `28,20,167/- with 6% interest per annum from the date of petition till the date of realization. 23 In view of the contributory negligence fixed by the Tribunal and confirmed by this Court as above, in the ratio of 50:50, the claimants are entitled to `14,10,083/-, being 50% of `28,20,167/-, with 6% interest per annum, from the date of petition, till the date of realization, excluding interest for the delayed period of 220 days in filing the appeal. The Corporation is directed to deposit the enhanced compensation of `14,10,083/-, with interest at 6% per annum, within a period of three weeks from the date of receipt of a copy of this judgment; Out of the enhanced compensation of `14,10,083/-, `5,00,000/- with proportionate interest shall be invested in Fixed Deposit, in the name of the first claimant - wife of deceased NDRS Bhaskar, in any Nationalized/Scheduled/Grameena Bank, for a period of ten years, renewable for 24 another ten years, with liberty reserved to her to withdraw the interest periodically; A sum of `7,00,000/- with proportionate interest shall be invested in the name of the second claimant - minor daughter of deceased in any Nationalized/Scheduled/Grameena Bank, till she attains the age of 30 years, with liberty reserved to the mother and natural guardian to withdraw the periodical interest for her welfare till the minor attains the age of 21 years and from 22 years to 30 years, the second claimant/daughter of deceased is entitled to withdraw the interest periodically. Remaining sum of `2,10,083/- with proportionate interest shall be released in favour of the first claimant, immediately on deposit by the Corporation; The amount in deposit by the Corporation in M.F.A.No.5455/2009 is directed to be transmitted to the jurisdictional Tribunal, forthwith. 25 Office to draw award, accordingly. Shri. Ravi S. Samprathi, learned counsel is permitted to file vakalath on behalf of second respondent/Insurer in M.F.A.No.3056/2010. SD/- JUDGE SD/- JUDGE BMV*