

Smt Jancy Vs. The Divisional Controller

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Court : Karnataka

Decided On : Sep-03-2020

Judge : Alok Aradhe and H T Narendra Prasad

Appeal No. : MFA 4858/2014

Appellant : Smt Jancy

Respondent : The Divisional Controller

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE3D DAY OF SEPTEMBER 2020 PRESENT THE HONBLE MR. JUSTICE ALOK ARADHE AND THE HONBLE MR. JUSTICE H.T. NARENDRA PRASAD M.F.A. NO.6447/2016 C/W M.F.A. NO.5729/2016 (MV) M.F.A. NO.6447/2016 BETWEEN: THE UNITED INDIA INSURANCE CO. LTD., DIVISIONAL OFFICE RAMA BHAVAN COMPLEX NEAR NAVA BHARATH CIRCLE MANGALORE BY ITS MANAGER NOW BY ITS REGIONAL OFFICE KRISHI BHAVAN NRUPATHUNGA ROAD BANGALORE-560 001 BY ITS MANAGER. ... APPELLANT (BY Mr. B.A. RAMAKRISHNA, ADV.,) AND:

1. SMT. MARY AGED ABOUT49YEARS W/O LATE SEBASTIAN PAREKAL.

2. MR. JAMES AGED ABOUT31YEARS S/O LATE SEBASTIAN PAREKAL. 2

3. MR. BIJU P S AGED ABOUT 30 YEARS S/O LATE SEBASTIAN PAREKAL. ALL ARE R/AT PAREKAL HOUSE NERIYA VILLAGE BELTHANGADY TALUK PRESENTLY RESIDING AT ELIZABETH NILAYA , JEPPU BOPPAL VALENCIA, MANGALORE-575001.

4. MR. PETER K M MAJOR BY AGE S/O MATHEW R/AT AMBATEMOOLU HOUSE GANDIBAKILU POST NERIYA VILLAGE BELTHANGADY TALUK-574214.

5. THE MANAGING DIRECTOR KSRTC K H ROAD BANGALORE-560 027. ... RESPONDENTS (BY Ms. H.R. RENUKA, ADV., FOR R5 Mr. SANTOSH KUMAR, ADV., FOR R4 V/O DTD:26-2-2020 SERVICE OF NOTICE TO R1 TO R3 HELD SUFFICIENT) - - - THIS M.F.A. IS FILED UNDER SECTION 173(1) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 27.4.2016 PASSED IN MVC NO.151/2013 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL AND III ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MANGALURU, D.K. AWARDED COMPENSATION OF RS.15,12,000/- WITH INTEREST AT 9 P.A. FROM THE DATE OF THE PETITION TILL THE DATE OF REALIZATION. 3 M.F.A. NO.5729/2016 BETWEEN: KARNATAKA STATE ROAD TRANSPORT CORPORATION K.H. ROAD, BANGALORE BY ITS MANAGING DIRECTOR REPRESENTED BY ITS CHIEF LAW OFFICER. ... APPELLANT (BY Mrs. RENUKA H.R., ADV.,) AND:

1. MARY AGED ABOUT 49 YEARS W/O LATE SEBASTIAN PAREKAL.

2. JAMES AGED ABOUT 31 YEARS S/O LATE SEBASTIAN PAREKAL.

3. BIJU P S AGED ABOUT 30 YEARS S/O LATE SEBASTIAN PAREKAL. ALL ARE R/AT PAREKAL HOUSE NERIYA VILLAGE BELTHANGADY TALUK PRESENTLY RESIDING AT ELIZABETH NILAYA , JEPPU BAPPAL VALENCIA, MANGALORE-575002.

4. PETER K M MAJOR BY AGE S/O MATHEW R/AT AMBATEMOOLU HOUSE GANDIBAKILU POST NERIYA VILLAGE BELTHANGADY TALUK-574214.

5. THE UNITED INDIA INSURANCE COMPANY LTD., DIVISIONAL OFFICE RAMA BHAVAN COMPLEX NEAR NAVA BHARATH CIRCLE MANGALORE-575003 REP. BY ITS MANAGER. ... RESPONDENTS (BY Mr. GURUPRASAD B.R. ADV., FOR R1 TO R3 Mr. M. CHAMARAJ, ADV., FOR R4 Mr. B.A. RAMAKRISHNA, ADV., FOR R5) - - - THIS M.F.A. IS FILED UNDER SECTION 1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED 27.4.2016 PASSED IN MVC NO.151/2013 ON THE FILE OF THE MACT, III ADDITIONAL SENIOR CIVIL JUDGE, JMFC, MANGALURU, D.K. AWARDED A COMPENSATION OF RS.15,12,000/- WITH INTEREST @ 9% P.A. FROM THE DATE OF PETITION TILL THE DATE OF REALIZATION. THESE M.F.As. COMING ON FOR ADMISSION, THIS DAY, ALOK ARADHE J., DELIVERED THE FOLLOWING: COMMON

JUDGMENT

M.F.A.No.6447/2016 has been filed by the Insurance Company, whereas M.F.A.No.5729/2016 has been filed by Karnataka State Road Transport Corporation (hereinafter referred to as 'the KSRTC' for short). Since, both the appeals arise out of the accident, which took place on 23.04.2012 as well as from the judgment dated 27.04.2016 passed by the Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal, for short), they were heard together and are being decided by this common judgment. 5

2. Facts leading to filing of these appeals briefly stated are that on 23.04.2012, deceased Johnson P.S. was proceeding as pillion rider in motor cycle bearing registration No.KA05-HF-7820 towards Belthangady side. When they reached near Kasba Village at about 8.45 p.m., the rider of the motor cycle drove the motor cycle in a rash and negligent manner and dashed against KSRTC bus bearing registration No.KA19-F-2489, which was being driven in a high speed and in a rash and negligent manner from opposite direction. Both the vehicles collided with each other and the occupants of the motor cycle were thrown on the road and sustained grievous injuries and succumbed to the injuries on spot.

3. Thereupon, the claimants filed a petition under Section 166(1) of the Act seeking compensation inter alia on the ground that deceased Johnson P.S. at the time of accident was aged about 20 years and was a student of 2nd year BSc course in SDM College from Ujire. It was also pleaded that deceased was doing a part time job and earning a sum of Rs.8,000/- per month. It was also pleaded that the accident took place on account of rash and negligent driving of the rider of the motor cycle and the driver of the KSRTC bus and respondent Nos.1 to 3 are liable to pay compensation. A sum of Rs.30 Lakhs was claimed by way of compensation along with interest.

4. The respondent No.1 did not enter appearance and was proceeded exparte. The respondent No.2, the insurance company did not file any written statement. The respondent No.3 viz., the corporation filed the written statement in which it was pleaded that accident took place entirely due to rash and negligent driving of the rider of the motor cycle and it was denied that the driver of the bus drove the bus in a rash and negligent manner. It was also pleaded that the driver of the bus was on extreme left hand side of the road and tried to avoid the accident but the motor cycle and its rider lost the control and hit the bus. It was also pleaded that the amount of compensation claimed is excessive and exorbitant and the rate of interest is also on the higher side.

5. The Claims Tribunal on the basis of the pleadings of the parties, framed issues and recorded the evidence. The 7 claimants in order to prove their case examined one of the claimants viz., Mary as PW1 and exhibited 21 documents viz., Ex.P1 to Ex.P21, whereas, the corporation examined the driver of the bus Babu Ramdas Rathod and exhibited three documents viz., Ex.R1 to R3. The Tribunal vide impugned judgment held that the accident took place on account of rash and negligent driving of the rider of the motor cycle as well as the driver of the bus. It was further held that claimants are entitled to compensation of Rs.15,12,000/- along with interest at the rate of 9% per annum. In the aforesaid factual background, the Insurance Company as well as the Corporation are in appeal before us.

6. Learned counsel for the Corporation submitted that from perusal of the First Information Report as well as the charge sheet, which was filed against the driver of the motor cycle and the spot sketch Ex.P5, it is evident that the rider of the motor cycle drove the motor cycle to the extreme right side of the road and dashed the bus, which was proceeding on the left side of the road. It is further pointed out that the accident has taken place when the bus was 8 nearly four feet away from the left side of the road and therefore, the driver of the bus cannot be held liable for causing the accident. It is also argued that mere payment of ex-gratia compensation by the corporation or lodging of the complaint by the driver cannot be made the basis to attribute negligence to the driver of the bus and finding recorded by the Tribunal in this regard is perverse. It is further submitted that Insurance Company of the motor bike has to be held liable. Alternatively, it is submitted that the deceased was a student who was studying in the college, and therefore, his income, which has been assessed at Rs.8,000/- per month is on the higher side and the Tribunal erred in applying the multiplier of 19. It is also urged that the rate of interest, which is awarded is on the higher side.

7. Learned counsel for the Insurance Company submitted that the accident took place on account of negligence of the driver of the bus and since, three persons were traveling on the bike, which was insured by the Insurance Company, therefore, the Insurance Company cannot be held liable. It is also urged that the amount of 9 compensation awarded by the tribunal is excessive and the Tribunal grossly erred in awarding Rs.5 Lakhs on account of loss of future prospects.

8. On the other hand, learned counsel for the claimants has justified the award passed by the Claims Tribunal and has submitted that the amount of compensation awarded by the Claims Tribunal is just and proper.

9. We have considered the submissions made by the learned counsel for the parties and have perused the record. It is well settled in law that when an accident happens through the combined negligence of two persons, he alone is liable to the other who had the last opportunity of avoiding the accident by reasonable care, and who then knew or ought to have known of the danger caused by the others negligence. [See: SALAMOND ON THE LAW OF TORTS, TWELFTH EDITION

1957 PAGE439441].. The general rule is that the vehicle should be driven at a speed which enables the driver to stop within the limits of his vision and failure to do this will almost always result in the driver being held, in whole or in part, responsible for the collision. [See:

10. CLERK AND LINDSELL ON TORTS, ELEVENTH EDITION, 1954 PAGES368370].. It is equally well settled legal proposition that burden of proving negligence lies on the person who alleges it. However, facts of the accident may by themselves constitute evidence of negligence and to such a case the Doctrine of res ipsa loquitur apply which means the things speak for itself. The aforesaid rule is one of the exception to the general rule that burden of proving negligence lies on the person who alleges it. The Supreme Court in MUNICIPAL CORPORATION OF GREATER BOMBAY VS. LAKSHMAN IYER AND ORS. AIR 2003 SC4182 held that the crucial question in case of contributory negligence is whether either party could by reasonable care, have avoided the consequences of others negligence.

10. A division Bench of this court in SHARADABAI VS. KARNATAKA STATE ROAD TRANSPORT CORPORATION, ILR 1987 KAR2730 has held that in order to discharge the burden of proof with regard to contributory negligence, it is unnecessary for the propounder of that defence to adduce evidence about the matter and 11 contributory negligence can be and very often is inferred from the evidence already adduced by the claimants or from the perceptible facts. However, the finding with regard to contributory negligence has to be recorded on the basis of proper consideration of the pleadings and legal evidence adduced by both the parties and the same cannot be based merely on police records. [See: MINUROUT VS. SATYA PRADYUMNA MOHAPATRA, (2013) 10 SCC695 AND SARALA DEVI VS. ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD., (2014) 15 SCC450. It is well settled in law that burden to prove breach of duty on the part of the victim lies on the insurance company and the insurance company has to discharge the burden. [SEE: USHA RAJ KHOWA VS. PARAMOUNT INDUSTRIES, (2009) 14 SCC71. In MANGALA RAM VS. ORIENTAL INSURANCE CO. LTD., (2018) 5 SCC656.

11. In the backdrop of aforesaid well settled legal principles, we may examine the facts of the case in hand. From the evidence on record, it is axiomatic that the bus as well as the motor bike were coming from opposite direction 12 and there has been a collision between the two vehicles. The evidence of RW1 viz., Babu Ramdas Rathod is material who was the driver of the bus in question. The aforesaid witness has stated that when he was driving the bus from Mangalore to Dharmasthala near Kasaba Village at about 8.45 p.m., motor cycle with two pillion riders came from opposite direction and in order to over take the tempo track vehicle came on the wrong side of the road and dashed against bus which was proceeding on the extreme left side of the road. However, in the cross examination, he has admitted that even though he had lodged the First Information Report with regard to the incident, he had not mentioned about the tempo track vehicle. It has further been admitted by him that the head lights of the bus were in working condition and he was able to see the road. Thus, it is evident that the driver of the bus with due diligence could have seen the motor bike, which traveled to the right side of the road and dashed against the bus. In other words, the driver of the bus who was driving the heavier vehicle had the last opportunity to avoid the accident. In the state of aforesaid evidence on record, we hold that the driver of the bus as well as the rider 13 of the motor cycle had contributed to the extent of 50% each in causing the accident.

12. Now we may advert to the quantum of compensation. The deceased was admittedly aged about 20 years and was a student of second year B.Sc and was working as an Accountant on part time basis and used to earn Rs.8,000/- per month. However, no evidence has been produced with regard to the income of the deceased. Therefore, his monthly income has to be assessed as per the guidelines framed by the Karnataka State Legal Services Authority. Therefore, the notional income of the deceased comes to Rs.7,000/- per month. To the aforesaid amount, an amount of 40% has to be added on account of future prospects in view of law laid down by the constitution bench of Supreme Court in NATIONAL INSURANCE COMPANY LTD V. PRANAY SETHI, AIR 2017 SC5157 Thus, the monthly income comes to Rs.9,800/-. Since, the deceased was a bachelor, therefore, half of the amount has to be deducted on account of personal expenses. Therefore, the amount comes to Rs.4,900/-. Taking into account the age of 14 the

deceased, which was 20 years, the multiplier of 18 is required to be applied. Thus, the claimants are held entitled to a sum of (Rs.4,900x12x18) Rs.10,58,400/-. In view of laid down by the Supreme Court in MAGMA GENERAL INSURANCE CO. LTD. VS. NANU RAM & ORS. (2018) 18 SCC130 which has been subsequently clarified by the Supreme Court in UNITED INDIA INSURANCE CO. LTD. Vs. SATINDER KAUR AND ORS. IN CIVIL APPEAL NO.2705/2020 DECIDED ON3006.2020, each of the claimants will be entitled to a sum of Rs.40,000/- on account of loss of love and affection. Thus, they are held entitled to a sum of Rs.1,20,000/-. In addition, the claimants are held entitled to a sum of Rs.30,000/- on account of loss of estate, funeral expenses. Thus, the claimants, in all are held entitled to a sum of Rs.12,08,400/-. Needless to state that the aforesaid amount shall carry interest at the rate of 6% per annum from the date of filing of the petition till the payment is made. The aforesaid amount shall be paid by the corporation as well as the Insurance Company to the extent of 50% each. To the aforesaid extent, the judgment passed by the Claims Tribunal is modified. The amount in deposit 15 shall be transmitted to the Claims Tribunal for disbursement to the claimants. In the result, the appeals are disposed of. Sd/- JUDGE Sd/- JUDGE ss

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