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The Manager vs Smt. Radhamma

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Court : Karnataka

Decided On : Feb-28-2025

Judge : K.S.Mudagal,C.M. Poonacha

Appeal No. : MFA/1300/2024

Appellant : The Manager

Respondent : Smt. Radhamma

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2025 PRESENT THE HON'BLE MRS JUSTICE K.S.MUDAGAL AND THE HON'BLE MR JUSTICE C.M. POONACHA MISCELLANEOUS FIRST APPEAL NO.1300/2024 (MV-D) BETWEEN: THE MANAGER MAGMA HDI GIC LTD. 1ST FLOOR, HMASTRID NO.36, J.C ROAD, BANGALORE NOW REP. BY THE MANAGER MAGMA HDI GIC LTD. 2ND FLOOR, HMJC TOWERS NEAR MINERVA CIRCLE BENGALURU - 560 002 APPELLANT (BY SRI PRADEEP B, ADVOCATE) AND:

1. SMT.RADHAMMA

W/O LATE SHIVAMURTHY AGED ABOUT 45 YEARS Digitally signed by LAKSHMINARAYANA 2. KUM.ROHINI MURTHY RAJASHRI D/O LATE SHIVAMURTHY R Location: High Court of Karnataka @ SHIVAMURTHY AGED ABOUT 23 YEARS

3. SMT GOWRAMMA W/O LATE RAMAPPA AGED ABOUT 85 YEARS R1 TO R3 ARE R/AT SIDDANAMATA CHANNAGIRI TALUK DAVANAGERE DISTRICT

4. DHANANJAYA M C S/O CHANDRASHEKHARAPPA AGED ABOUT 41 YEARS -2- R/AT SIDDANAMATA CHANNAGIRI TALUK DAVANAGERE DISTRICT

5. K M MARUTHI S/O K S MAHESHWARAPPA AGED ABOUT 56 YEARS R/AT SIDDANAMATA CHANNAGIRI TALUK DAVANAGERE DISTRICT RESPONDENTS (BY SRI K.V.SATEESH CHANDRA, ADVOCATE FOR R1 TO R3; SRI D.P.MAHESH, ADVOCATE FOR R4 & R5) THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER

SECTION 173(1) OF MV ACT PRAYING TO SET ASIDE THE JUDGMENT

AND AWARD DATED 06.12.2023 PASSED IN MVC NO.573/2020 ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC, MACT-X, CHANNAGIRI, AWARDING COMPENSATION OF RS.23,28,301/- WITH INTEREST AT 6% P.A. FROM THE DATE OF PETITION TILL REALIZATION. THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MRS JUSTICE K.S.MUDAGAL AND HON'BLE MR JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S.MUDAGAL) Heard both side.

2. Challenging the award in M.V.C.No.573/2020 passed by the Senior Civil Judge & JMFC, MACT-X, Channagiri, the Insurer has preferred this appeal.

3. The appellant was respondent No.3, respondent Nos.1 to 3 were claimant Nos.1 to 3, respondent Nos.4 and 5 -3-

were respondent Nos.1 and 2 in M.V.C.No.573/2020 before the Tribunal. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Tribunal.

4. Claimant Nos.1 and 2 are the wife and daughter and claimant No.3 is the mother of Shivamurthy who died in

the accident. Claimant No.1 filed the complaint before Santhebennur police purportedly on 25.06.2020 at 12.00 noon alleging that on 21.06.2020 at 10.00 a.m. when Shivamurthy was engaged in sowing maize in his land, hiring tractor bearing Registration No.KA-17-TD-2929 belonging to respondent No.2. At that time, respondent No.1/driver of the Tractor asked Shivamurthy to clear the waste stuck to the tiller of the tractor which was obstructing the sowing operations. Accordingly when Shivamurthy was clearing the said waste, respondent No.1 suddenly drove the said vehicle in reverse mode, consequently Shivamurthy was hit by the tractor and suffered grievous injuries to his neck.

5. It was further alleged in Ex.P2/the complaint that Shivamurthy was shifted to Aaraike Hospital, Davanagere and from there he was shifted to Kasturba Hospital, Manipal. It was -4-

further alleged that the doctor in Kasturba Hospital advised claimant No.1 to take back the patient saying that he would not survive. When he was being shifted in ambulance to their place, on 24.06.2020 at 3.45 p.m. Shivamurthy succumbed to the injuries.

6. Claimants filed M.V.C.No.573/2020 alleging that the

accident and consequential death of Shivamurthy occurred due to actionable negligence on the part of respondent No.1 in driving the Tractor bearing Registration No.KA-17-TD-2929. Respondent No.2 was the registered owner and respondent No.3 was the Insurer of the said vehicle. They further contended that they were all dependent on the income of Shivamurthy and due to his death, they

have suffered damages to the tune of Rs.38,00,000/- and respondents are liable to pay the said sum with 18% interest per annum.

7. Respondent Nos.1 and 2 contested the petition

denying negligence on the part of respondent No.1. They further contended that vehicle was insured with respondent No.3 and their liability if any is payable by respondent No.3.

8. Respondent No.3 contested the petition denying occurrence of the accident as alleged and the involvement of -5-

the insured vehicle in the accident. They denied the age, occupation, income of the deceased and its liability to pay the compensation. Respondent No.3 also sought permission to avail all available defence to it before the Tribunal.

9. In support of the case of the claimants, claimant

No.1 was examined as PW.1 and Exs.P1 to P17 were marked. Respondent Nos.1 and 2 did not lead any evidence. On behalf of respondent No.3, its Officer was examined as RW.1 and Chief Medical Officer of Aaraike Hospital was examined as RW.2 and Exs.R1 to R4 were marked.

10. The Tribunal on hearing the parties, by the

impugned judgment and award held that the accident occurred due to actionable negligence on the part of respondent No.1 in driving tractor bearing Registration No.KA-17-TD-2929 and the vehicle was insured with respondent No.3. The Tribunal considered age of the deceased as 42 years and applied 14 multiplier. The Tribunal assessed the income of the deceased notionally at Rs.14,500/- added 30% to the same by way of future prospects, deducted 1/3rd for his personal expenses and awarded compensation of Rs.21,11,256/- on the head of loss of

-6- dependency. The Tribunal in all awarded compensation of Rs.23,28,301/- on different heads as follows: Sl. Particulars Compensation No. awarded in Rs.

1. Loss of dependency 21,11,256/-

2. Funeral Expenses 25,000/-

3. Loss of consortium 1,20,000/-

4. Medical expenses 72,045/- Total 23,28,301/-

11. The Insurer was directed to pay the said amount with interest at 6% per annum. Challenging the said award, the above appeal is filed. Submissions of Sri B.Pradeep, learned Counsel for the Insurer:

12. There was five days delay in filing the complaint.

Absolutely, there was no explanation for the same. He submits that the evidence on record clearly shows that respondent Nos.1 and 2 in collusion with the claimants have planted the insured vehicle for making wrongful gain and cause wrongful loss to the insurer. RW.2 has clearly admitted that no medico legal case was registered and the medico legal intimation was not sent to the police. The entries made in activity record for billing as per Ex.R4 show as Nil MLC. The case sheet of Aaraike Hospital shows that the vehicle in question was not

-7- involved in the accident. That the compensation awarded by the Tribunal is also on the higher side. Submissions of Sri K.V.Sateesh Chandra, learned Counsel for respondent Nos.1 to 3/claimants:

13. The evidence on record clearly shows that claimant No.1 was busy in attending to the injured/victim, therefore

there was delay in filing the complaint. On thorough investigation, the police have filed charge sheet/Ex.P3 against respondent No.1/driver of tractor in question. Respondent No.3 insurer did not rebut the presumptive value of charge sheet. No investigation was conducted by the Insurer in the matter. The evidence of RW.2 shows that the victim was brought to the hospital with history of accident involving tractor. Therefore, there was no reason to disbelieve the evidence of the claimants.

14. On hearing the submissions of both side and examining the materials on records, the points that arise for consideration of the Court are:

(i) Whether the Tribunal was justified in holding that Shivamurthy died due to actionable negligence on the part of respondent No.1 in driving the tractor -8- bearing Registration No.KA-17-TD-2929 belonging to respondent No.2?

(ii) Whether the compensation awarded by the Tribunal is just one? Analysis Reg. Point No.1:

15. The relationship between the claimants and the

deceased, the fact that respondent No.2 was the registered owner and respondent No.3 was the insurer of tractor bearing Registration No.KA-17-TD-2929 at the time of the accident in question are not disputed. The claimants contended that the accident occurred due to negligent driving of tractor by respondent No.1. Whereas respondent No.3 claims that to make wrongful gain said tractor was planted in the said case subsequently on deliberations. Initially the burden of proving the fact that the accident occurred in the manner alleged involving the tractor bearing Registration No.KA-17-TD-2929 was on the claimants. On the claimants discharging the said initial burden, the burden of rebutting the said evidence shifts to the respondents.

16. It is no doubt true that with regard to the accident involving the aforesaid vehicle, claimant No.1 filed complaint as -9-

per Ex.P2 before Santhebennur police. Said police on investigation filed charge sheet/Ex.P3 against respondent No.1 attributing negligence in driving the tractor bearing Registration No.KA-17-TD-2929. But the question is whether the charge sheet is conclusive proof and the Courts/Tribunals are barred

from traversing beyond charge sheet. In this regard the Coordinate benches of this Court in Veerappa and Another v. Siddappa & Anr.1 and Mahadevi W/o. Shrishail Kore and Others vs. Shivaputra and Another2 have held that the charge sheet and the police records are not conclusive proof of the occurrence of the accident or involvement of the vehicle.

17. In para 16 of the judgment in Veerappas case

referred to supra, this Court taking judicial note of the fact that there is some disturbing trend of unholy alliance among the police, the doctors, the lawyers and sometimes even the Insurance Company, to siphon out the public money and make unlawful gain is fast emerging. It is also gaining respectability and persons who indulge in such practices are acclaimed as most success in their respective profession. Such dangerous

ILR 2009 KAR 3562

(2021) 2 Kant.LJ 332 - 10 - trend, if unchecked would undermine the judicial process and the Court has to evaluate the evidence on record.

18. In Mahadevis case referred to supra, this Court

even went to the extent of saying that accused pleading guilty is also not conclusive proof in occurrence of the accident or involvement of the vehicle as alleged by the claimants. It was

held that mere charge sheet or accused pleading guilty in case

if shown to be deficient in truth and sufficient to tip the balance, the black sheep among the police and medical professionals is not conclusive proof of occurrence of the accident in question.

19. This Court has to re-appreciate the evidence in the light of the aforesaid judgments.

20. In the present case, the complaint was filed after five days of the accident. In Ex.P2/complaint absolutely there

was no whisper or explanation for filing the complaint belatedly. Though the complaint was purportedly filed on 25.06.2020 at 12.00 noon, Ex.P1/FIR claimants own document shows that the same was delivered to the Court on 26.06.2020 at 11.15 a.m. Even in the chief examination of PW.1, absolutely there was no explanation for such delay of more than five days

in filing the complaint. For the first time, in her cross- examination on 14.09.2022 after about two years, claimant states that since she was engaged in getting the treatment for victim, they did not file the complaint on the date of the accident. But in unnumbered para 2 of the cross-examination dated 14.09.2022 she states that her husband was treated in

the hospital, there was deliberations between her and respondent No.1 whether to file the complaint or not and about hospital expenses. That itself goes to show that there was deliberations between her and respondent No.1 in filing the complaint before the police. Therefore her statement in cross- examination that since she was engaged in getting treatment to the victim there was delay in filing the complaint does not

appeal acceptance. Further she admits in her cross- examination that several of her relatives had come to the hospital. To the suggestions that she could have filed the complaint through them, she claimed that none of them came forward to file the complaint. But she does not whisper the names of such relatives who declined her request.

21. It is also material to note that in the cross- examination, she admits that she has received Rs.1,00,000/- from respondent No.1. But she does not disclose the same in - 12 -

her petition or chief examination. She claims in the petition that the tractor was hired from respondent No.2, but in her cross-examination dated 14.09.2022 she states that tractor belongs to respondent No.1 and he had brought the same for agricultural operations. She states that she is well acquainted with respondent No.1 since twenty years and she was working under him. Therefore he had brought the tractor and she states that the tractor belongs to respondent No.1. In her claim petition, she says that tractor belonging to respondent No.2 caused the accident. Except her solitary statement, she did not choose to examine any other witnesses to prove that the insured tractor of respondent No.2 was involved in the accident.

22. Admittedly, the victim was treated in Aaraike

Hospital, Davanagere initially. From there he was shifted to Kasturba Hospital, Manipal. None of the doctor who treated the victim in the said hospitals were examined. Casualty Medical Officer of Aaraike Hospital who treated the victim was examined as RW.2. The casualty department records of the said hospital and examination of the concerned doctors could have thrown light on who brought the victim and with what history. In Ex.P13 discharge summary of Kasturba Hospital, - 13 -

Manipal it is mentioned with alleged history of being hit by tractor. That does not indicate that the tractor involved was tractor bearing Registration No.KA-17-TD-2929. Respondent No.3 summoned RW.2 Chief Medical Officer of Aaraike Hospital and Exs.R3 and R4 were produced by him. RW.2 states that said hospital did not register the case in MLC Register and issued MLC intimation to the police regarding history of the accident in question. He admits that he was not the doctor who treated the deceased. But there was no impediment for the claimants to summons Casualty Medical officer of Aaraike Hospital who admitted the deceased in the said hospital and treated him.

23. Ex.R4 contains the activity records regarding case sheet and discharge summary of Shivamurthy maintained in Aaraike Hospital, Davanagere. Those documents also do not

indicate who had brought Shivamurthy to hospital. In Ex.R4/Activity Record for Billing it is clearly mentioned as nil MLC and the name of claimant No.1 is mentioned. If claimant No.1 had taken the victim to the hospital and she was aware of the vehicle involved, in the ordinary course she would have stated the said history in the hospital before those Medical officers. There is no correction in the case sheet in mentioning

- 14 - the alleged history records of Aaraike Hospital as well as Kasturba Hospital, Manipal. The records clearly show that the victim was got discharged against the medical advice. Therefore the evidence of PW.1 that the doctors stated that her husband Shivamurthy would not survive, therefore they should take him home

does not inspire the confidence of the Court.

24. It is also material to note that though respondent

Nos.1 and 2 came before the Court, admitted occurrence of the accident involving the insured tractor, they did not give any intimation to the insurer and the police as required under Sections 133 and 134 of the Motor Vehicles Act, 1988 that too when PW.1 clearly admits that there was deliberations between her and respondent No.1 regarding filing of the complaint. The above evidence shows that respondent No.3/insurer rebutted the evidence i.e. the charge sheet produced and relied by the claimants. Therefore, the burden of proving that the occurrence of the accident or the involvement of the tractor bearing

Registration No.KA-17-TD-2929 by adducing acceptable evidence reverted to the claimants. As already stated, except the evidence of PW.1/claimant No.1 who is the interested witness, absolutely, no other independent evidence was - 15 - adduced to prove the involvement of the said vehicle, though the same was available to the claimants.

25. Under the circumstances, the aforesaid judgments

of this Court in Veerappas case and Mahadevis case referred to supra, clearly cover this case. The Tribunal without adverting itself to the aforesaid legal position enunciated in the above judgments, without judicious appreciation of the evidence on record, just relying on the charge sheet/Ex.P3 and unreliable evidence of PW.1 jumped to the conclusion that the accident occurred due to the involvement of the tractor bearing

Registration No.KA-17-TD-2929 which was insured with respondent No.3. Therefore the finding of the Tribunal is unsustainable and needs to be reversed. Reg. Point No.2:

26. Though the involvement of the tractor bearing

Registration No.KA-17-TD-2929 was not established, claimant No.1 in her evidence as well as in her claim petition has claimed that vehicle being driven by

respondent No.1 has caused the accident. Respondent No.1 did not dispute the said fact that he has caused the accident leading to the death of the victim. - 16 -

27. As already noted, PW.1 had admitted that vehicle

belonging to respondent No.1 has caused the accident. Therefore, liability if any is payable by respondent No.1. For that purpose, quantum of compensation has to be computed. As rightly pointed out by the Tribunal in awarding compensation, following factors shall have to be considered:

(i) age of the deceased;

(ii) income of the deceased;

(iii) number of dependants for the purpose of deducting for personal expenses of the deceased;

(iv) Applicable multiplier; &

(v) future prospects to be paid on the income of the deceased.

28. PW.1 in her cross-examination clearly stated that

the deceased was aged 46 years. The Tribunal considered the notional income at Rs.14,500/-. That is not challenged by respondent Nos.1 and 2. For the age of 46 years, applicable multiplier is 13. For the nature of the employment and age of the deceased, future prospects at the rate of 25% on the income of the deceased has to be awarded. As deceased had three dependents, 1/3rd has to be deducted for his personal expenses. At that rate, income of the deceased would be 18,125/- (Rs.14,500/- + 25% of Rs.14,500). Rs.18,125/- x

- 17 - Thus the compensation payable on the head of loss of dependency comes to Rs.18,84,948/-. The above calculation is in accordance with the ratio in the judgments of the Honble Supreme Court in National Insurance Company Ltd., v. Pranay Sethi3 and Sarla Verma v. Delhi Transport Corporation4.

29. The Tribunal has awarded Rs.72,045/- towards medical expenses on the basis of the medical records produced by the claimants. That needs to be maintained.

30. As per the ratio laid down by the Hon'ble Supreme

Court in Pranay Sethis case referred to supra and Magma General Insurance Company Ltd., v. Nanu Ram5, claimant Nos.1 to 3 are entitled to compensation of Rs.40,000/- each with escalation at 10% on the head of consortium which comes to Rs.44,000 x 3= Rs.1,32,000/-.

31. As per the judgment of the Hon'ble Supreme Court

in Pranay Sethis case, the claimants are entitled to compensation of Rs.15,000/- on the head of loss of estate and Rs.15,000/- for funeral expenses and transportation with

(2017) 16 SCC 680

(2009) 6 SCC 121

(2018) 18 SCC 130 - 18 - escalation at 10%. Therefore the just compensation payable is as follows: Sl. Particulars Compensation No. awarded in Rs.

1. Loss of dependency 18,84,948/-

2. Loss of consortium 1,32,000/-

3. Loss of estate 16,500/-

4. Funeral expenses & 16,500/- transportation charges

5. Medical expenses 72,045/- Total 21,21,993/-

32. Respondent No.1 is liable to pay the said

compensation with interest at 6% per annum from the date of the petition till its realization. For the aforesaid reasons, the appeal deserves to be allowed in terms of the aforesaid observation. Hence, the following:

ORDER

(i) The appeal of the Insurer is partly allowed.

(ii) The impugned judgment and award is modified as follows:

(a) The petition in M.V.C.No.573/2020 before the Senior Civil Judge, JMFC, MACT-X, Channagiri is dismissed against respondent Nos.2 and 3.

(b) The petition in M.V.C.No.573/2020 is allowed in part against respondent No.1. - 19 -

(c) Claimants are entitled to compensation of Rs.21,21,993/- with interest thereon at 6% p.a. from the date of petition till its realization payable by respondent No.1/driver.

(d) Respondent No.1 shall deposit the compensation on adjusting the amount already paid, if any, before the Tribunal within four weeks from the date of receipt of copy of this order.

(e) Claimant Nos.1, 2 and 3 are entitled to compensation in the ratio of 50%, 30% and 20% respectively.

(f) On deposit of the amount by respondent No.1, the Tribunal shall digitally release the entire share of claimant No.3 and release 50% of the share of claimant Nos.1 and 2 and invest balance amount in fixed deposit in nationalized/scheduled bank of the choice of claimant Nos.1 and 2 for a period of three years.

(g) Amount in deposit, if any shall be digitally refunded to the Insurer.

(h) Transmit the trial Court records to the Tribunal forthwith. Sd/- (K.S.MUDAGAL) JUDGE Sd/- (C.M. POONACHA) JUDGE KSR List No.: 1 Sl No.: 34

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