

Harishchandra Hegde and anr. Vs. T.P. Krishnamurthy and ors.

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Court : Karnataka

Decided On : Jul-14-1983

Reported in : II(1984)ACC536

Judge : G.N. Sabhahit and ;R.S. Mahendra, JJ.

Appellant : Harishchandra Hegde and anr.

Respondent : T.P. Krishnamurthy and ors.

Judgement :

G.N. Sabbahit, J.

1. These two appeals arise out of the judgment and award, dated 3rd day of September 1980, passed by the Motor Accidents Claims Tribunal, Bangalore City. in MVC Nos. 99 and 100 of 1980 on its file, awarding compensation, of Rs. 24,446-70 p. in MVC No. 99 of 1980 and Rs. 21,27683P in MVC No. 100 of 1980.

2. MFA No. 29 of 1981 is by the owner of the motor cycle in question and also the rider of the motor cycle against the judgment and award in MVC No. 99, of 1980 MFA No. 265 of 1981 is by the same persons against the judgment and award in MVC No. 100 of 1980. The relevant facts giving rise to these appeals are these:

On 4-1-1980 at about 7 p.m. the claimants namely, Krishnamurthy and Padma were going in an autorickshaw bearing registration No. MYA 3072 on 4th cross

road in Manumanthnggar. from west to east to go to Gandhibazar. When the autorickshaw entered the third main road junction and the practically covered 3/4 of the junction motor cycle coming from the third main road dashed against the autorickshaw, as a result of which the inmates in the autorickshaw were thrown out and suffered fracture of the scapula and the collar-bone respectively and the disability therefrom. The husband instituted MVC No. 99 of 1980 claiming compensation of Rs. 60,000/- from respondents, whereas the wife instituted MVC No. 100 of 1980 claiming compensation of Rs. 50,000/-. They arrayed the owner, the insurer and the driver of the motor cycle as also the autorickshaw driver as respondents. The cases were contested and the owner and the driver of the autorickshaw denied their liability stating that the accident was not the result of rash and negligent driving on the part of the autorickshaw. Similarly, the driver and the owner of the motor cycle also denied their liability stating that the accident was not due to the rash and negligent driving of the motor cycle in question. Both of them further contended that the compensation claimed in the two cases was excessive. The two cases were heard together. During hearing the claimants examined themselves and no other eye witness was examined and they got marked Exhibits P-1 to P-21. As against that, respondents examined three witnesses and got marked Exhibits R-1 to R-17. The Tribunal appreciating the evidence on record found that both the drivers of autorickshaw and motor cycle were responsible for causing the accident and it fixed the proportion of liability at 50% each. In that view, taking into consideration the injury suffered and the disability left over the Tribunal awarded compensation of Rs. 24,446-70 p. in MVC No. 99 of 1980 and awarded compensation of Rs. 21,276-83 p. in MVC No. 100 of 1980. Aggrieved by the said judgment and award, the owner and driver of the motor cycle have instituted the above appeals as stated above.

3. In both the cases, the Insurance Company is made liable. The learned Counsel appearing for the appellants strenuously contended firstly that the tribunal was not justified in holding that the driver of the motor cycle was responsible in causing the accident. He further submitted alternatively that even if there was some negligence on the part of the driver of the motor cycle, the compensation claimed was excessive. He also submitted, without prejudice, that whatever compensation was to be paid by the owner of the vehicle had to be saddled on the Insurance

Company. As against that the learned Counsel appearing for the claimants argued supporting the judgment and award. So far as negligence and quantum of compensation are concerned, he did not oppose that the liability should be fixed on the Insurance Company. The learned Counsel for the Insurance Company however argued that since the vehicle was already transferred on the date of accident, no liability should be saddled on the Insurance Company. The points therefore that arise for our consideration in these appeals are

(1) Whether the Tribunal was justified in holding that both the drivers of auto rickshaw and motor cycle were liable for causing the accident and if so, whether the tribunal was further justified in apportioning the liability at 50% on each driver?.

(2) Whether the tribunal was justified in not saddling the liability on the Insurance Company in the 2 cases?.

4. The evidence on record discloses that the autorickshaw driver did not halt when he entered the junction from the cross road. Though according to the claimant (PW 1) there was a board 'Main Road Ahead,' it is obvious that the autorickshaw driver did not halt at the junction. He proceeded further under a mistaken notion that he could easily cross the road and go to the other side without any danger and that way he was rash and negligent in driving the autorickshaw. It is also on record that he pleaded guilty before the Magistrate. The motor cyclist was no doubt coming on the main road but that did not absolve him from the responsibility of looking out to see if there was any other vehicle going across the road. According to the evidence, especially the sketch Exhibit P-14 it is clear that the autorickshaw had practically crossed over to the other side. The motor cycle driver, if he were diligent and had proper look out could have very well avoided the accident by slightly deviating the vehicle to the off side. He has not done so. He has gone and hit the autorickshaw on its hind portion. The right of a driver to go on the main road does not give further right to endanger even when he could avoid the accident. The fact that the autorickshaw had crossed practically the junction would indicate that the motor cyclist had ample opportunity to avoid the accident. Since he has not done so, it is obvious that he has also contributed to the cause of the accident. That being so, the Tribunal has rightly held that both the drivers of

the vehicles contributed to the cause of the accident. We have no reason to differ.

5. In fact, in the case of composite negligence in causing the accident, it is normally not necessary to fix the proportion of liability among the different drivers. Both are liable to pay compensation jointly and severally to the claimants. They are joint tort-feasors. Since Under Section 110-B of the Motor Vehicles Act, there is statutory obligation on the part of the Court to fix the liability of the Insurance Company, the Tribunal has fixed the liability at 50% on the driver of the autorickshaw and 50% on the motor cyclist. We have no reason to differ from it on the facts of the present case.

6. Adverting to the quantum of compensation, the Tribunal has discussed in detail the nature of the injury. For medical treatment, for nourishing food and for nursing home charges, the special damages awarded by the Tribunal cannot be considered as high. In MVC No. 99 of 1980, as a result of the accident, the claimant suffered fracture of scapula and of collar-bone and the movement of the hand is affected. The claimant was a left-hander. The accident has caused him all the more harm and the general damages awarded at Rs. 20,000/- cannot be considered as high. The rest of the damages are awarded on the basis of expenses incurred and they are very modest and reasonable. We affirm the same. In MVC No. 100 of 1980, the claimant has suffered fracture of scapula and of collar bone which has affected the movement of her left hand. She cannot lift heavy things with her left hand. It has come in the way of enjoyment of normal life. Therefore, for injury, for pain and suffering, and for loss of amenities general damages of Rs. 20,000/- is awarded. Though this sum is slightly on the higher side, it is not so high as to call for our interference. We affirm the same.

7. Award of compensation is a matter of judicial discretion and unless the appellate court feels that what is awarded is very low or too high, it would not interfere simply because it could have slightly reduced it or slightly enhanced it. Hence, we do not propose to interfere with the general damages awarded in this case. The rest of the damages are awarded in this case for expenses towards medicine, nourishing food and the like and the same is reasonable. We affirm the same. Hence, there is no reason for us to interfere with the quantum of

compensation in either of the cases.

8. The last point urged for the consideration is whether the Insurance Company could be saddled with liability. The only ground made out by the learned Counsel for the Insurance Company is that the motor cycle was transferred by the original insurer of favour of the present second appellant on 30-10-1979. Hence he submitted that the policy stood lapsed on that day, since the permission or consent of the Insurance Company was not obtained for the transfer. This submission was met by the learned Counsel for the claimant and for the owner by inviting our attention to the fact that Insurance Company endorsed the transfer on 10-7-1980. That being so, it is obvious that the Insurance Company agreed to the transfer and has to be made liable for the transfer. In fact, this Court, discussing this aspect at some length in M.F.A. No. 437 of 1981, the judgment of which was delivered on 9-12-1981; observed that in such circumstances it should be deemed that consent of the Insurance Company was taken for the transfer of the vehicle as on and from the date of transfer. That being so, it is obvious that the Insurance Company is liable to pay the compensation by indemnifying the owner of his legal liability.

9. Section 96(1) of the Motor Vehicles Act makes it clear that though the Insurance Company has a ground to avoid the policy on account of fraud, since the endorsement of transfer of the policy is already there, the Insurance Company Would be liable for payment of compensation. The Company is liable to pay the compensation. If it has any grievance the owner, it is up to it to agitate the Matter.

10. In the result, these appeals are partly allowed. While affirming the judgment and award of the tribunal in the two casts, we direct that the amount of compensation awarded in the two cases shall be paid over by the Insurance Company namely, original respondent 5 along 'with interest at 6% per annum from the date of the petition till payment as also the costs of the claimants before the Tribunal. There shall be no order as to costs in these appeals.

11. The amount deposited by the appellants in the above appeals while obtaining the stay, shall be refunded to them.

