

IN THE HIGH COURT OF KARNATAKA AT BENGALURU  
THE HON'BLE MR. JUSTICE S.N.SATYANARAYANAAND  
THE HON'BLE MR.JUSTICE SACHIN SHANKAR MAGADUM

M.F.A.NO.8513/2015(MV-D)  
C/W M.F.A.NO.9098/2015(MV-  
D) DATED: 10-10-2019

SRI. SURESH KUMAR.A VS. SMT. LALITHA.S

JUDGMENT

*SATYANARAYANA J.,*

The claimants and contesting 2<sup>nd</sup> respondent - Insurer in MVC No.5992/2013 on the file of Small Causes and Motor Accident Claims Tribunal (for short 'Tribunal'), Bengaluru, have come up in these two appeals.

(i) Appeal in MFA No.8513/2015 is by the claimants seeking enhancement of compensation; to set aside the finding of the Tribunal regarding contributory negligence by the rider of motorcycle in causing the accident and to hold that the accident in question is caused due to rash and negligent driving of the tractor - trailer; accordingly, to fasten the liability to pay entire compensation on respondents 1 and 2 jointly and severally instead of shifting the same on 3<sup>rd</sup> respondent - owner of the motor cycle on which deceased was traveling.

(ii) Second appeal in MFA.No.9098/2015 is by the

contesting 2<sup>nd</sup> respondent – insurer of tractor-trailer in MVC.No.5992/2013 where the liability to pay compensation is saddled to an extent of 50% on it.

2. Though these two appeals are at the stage of admission, since the lower court record is received, at the request of learned counsel appearing for the appellant/s in both the appeals as well as other respondents, they are taken up for final disposal.

3. Brief facts leading to filing of MVC.No.5992/2013 are that, on 11.12.2011 at about 4.30 pm., the daughter of claimants namely Kum.Kruthika died in a road traffic accident involving Honda Activa bearing registration No.KA-18-S-6120 and tractor - trailer bearing registration No.KA-18-TA-3155 – 3156. According to claimants, their daughter Kum.Kruthika was pillion on Honda Activa, which was driven by one Vishal M.Jain at the relevant point of time. It is stated that the said accident was caused due to rash and negligent driving of tractor – trailer. As a result, the daughter of claimants who was traveling as pillion on aforesaid motor cycle fell down and the tractor ran over her resulting in her instant death.

4. In the claim petition, the claimants contended that their daughter was gainfully employed in a Textile Shop as an Accountant and was earning a monthly income of Rs.10,000/- and she was also conducting tuitions. Hence, they claimed compensation in a sum of Rs.25,00,000/-. The said claim petition was contested by the owner and insurer of tractor – trailer as respondents 1 and 2 and also by the owner and insurer of motor cycle as respondents 3 and 4.

5. In the proceedings before the Tribunal, on behalf of the claimants, 1<sup>st</sup> claimant adduced evidence as PW.1 and the rider of motor cycle on which claimants' daughter was traveling was examined as PW.2. In all, they have produced and marked 8 documents in support of the claim. On behalf of respondents, the Administrative Officer of 4<sup>th</sup> respondent – insurer of motor cycle was examined as RW.1 and in all 4 documents were produced and marked in support of the defence of respondents 3 and 4.

6. The Tribunal, on appreciation of the material available on record proceeded to allow the claim petition partially by awarding compensation to claimants in a sum of Rs.12,85,000/- payable with interest at 6% pa. However,

when it comes to saddling liability to pay compensation, 50% was saddled on respondents 1 and 2 jointly, namely the owner and insurer of tractor – trailer, which ran over the daughter of claimants' and 50% on 3<sup>rd</sup> respondent – owner of motor cycle. So far as 4<sup>th</sup> respondent – insurer of motor cycle is concerned, the liability to pay compensation on it was exonerated on the ground that the rider of motor cycle was not having valid driving licence at the relevant point of time, as such there was breach of policy condition hence, they are not liable to pay compensation. It is in this background, these two appeals are filed.

7. Heard the learned counsel for appellant/s in both the appeals as well as contesting respondents. Perused the material available on record. On going through the same, it is seen that the accident is not in dispute. So also death of Kum.Kruthika, aged about 18 years, in the said accident. Though in the claim petition it was contended that the deceased was pursuing her graduation in Commerce, no documents are produced in support thereof, except to demonstrate that she had completed Pre-University in Commerce. Further, though it was contended that she was earning a sum of Rs.10,000/- p.m., as Accountant, the claimants did not produce any document in support of the same. In spite of that, the Tribunal proceeded to take the income of deceased notionally at Rs.7,500/- p.m.,

and awarded compensation in a sum of Rs.12,85,000/- which is on higher side. In fact, the finding of Tribunal in taking the monthly income of the deceased at Rs.7,500/- itself is on higher side.

8. It is seen that the Apex Court in the matter of *Nagar Mal and Ors., -vs- Oriental Insurance Co.Ltd., & Ors.*, reported in 2018 ACJ 971 while dealing with similar situation with reference to the death of a student pursuing C.A., aged 20 years, awarded compensation taking the monthly income at Rs.6,000/- and by adding another 40% towards future prospects. If the Tribunal had accepted the same analogy and taken the income of the deceased at Rs.5,000/- pm, since she had completed PUC and had not pursued further studies, the total compensation would have been somewhere in the range of Rs.7,96,000/- including compensation under conventional heads. Therefore, in the fact situation, after appreciating the grounds urged in MFA.No.9098/2015, this Court would hold that the compensation payable is required to be fixed at Rs.7,96,000/- by accepting one of the grounds of the appellant in MFA No.9098/2015 regarding quantum of compensation.

9. Now coming to MFA.No.9098/2015 filed by the insurer of tractor – trailer is concerned, with reference to fastening 50% of liability on the ground of contributory

negligence, the same is required to be considered as under:

In the instant case, the material on record would indicate that the motor cycle on which Kum.Kruthika was traveling was driven by one Vishal M.Jain – PW.2 before the Tribunal. In his evidence, he clearly admits that he did not have valid driving licence at the relevant point of time. He also admits that without having valid driving licence he has driven the motor cycle on the date of accident with Kruthika as pillion on the said motor cycle. The said admission has come up in his cross-examination in the following manner:

*“I was not having driving licence to ride the two wheeler at the time of accident. I was aware that without holding the driving licence one cannot ride the two wheeler on the public road. It is true that inspite of knowing that without the driving licence one cannot ride the two wheeler still I ridden the two wheeler at the time of accident. It is false to say that inspite of not knowing the riding of the two wheeler I was riding the two wheeler at the time of accident. At the time of accident I was riding the two wheeler from Rathnagiri Bore to my house at Chikkamagalur town. I say that driver of the tractor and trailor is responsible is the cause of accident. Driver of the tractor was driving the same in negligent manner at the time of accident.”*

10. When the aforesaid evidence is looked into, it clearly shows that PW.2 inspite of knowing that he is not

entitled to drive the motor cycle, out of arrogance and impudence has driven the same without having valid driving licence. The evidence on record would also indicate that he was riding the motor cycle in a rash and negligent manner and before causing fall of the pillion – Kum.Kruthika on road, he had dashed against two other motor cycles. As a result, Kum.Kruthika fell down on road. At that time, the tractor – trailer was proceeding right behind the motor cycle in the same direction in which the motor cycle was proceeding. Hence, when the pillion – Kruthika fell down on the road, there was hardly any time for the driver of tractor – trailer to stop the vehicle and he had no other option but to run over the victim who fell on the road.

11. The evidence on record also clearly discloses that there is no collision between the tractor – trailer and motor cycle on which deceased – Kum.Kruthika was traveling as pillion thereby clearly indicating that there was no accidental involvement of tractor – trailer in causing the fall of Kum.Kruthika from the motor cycle. But, it is the rash and negligent driving of PW.2, who hit two other motor cycles before causing fall of Kum.Kruthika from the motor cycle, which is the reason for her fall in the path of the tractor – trailer. Since the fall has taken place right in front of the tractor – trailer which was moving at moderate speed, there was hardly any

time for the driver of the tractor – trailer to stop the same resulting in the said tractor – trailer running over the victim who had fallen from the motor cycle. Therefore, in the fact situation, question of fastening the liability on the driver of tractor – trailer does not arise. In fact, this finding is supported by the decision of Co-ordinate Bench of this Court in the matter of *United India Insurance Co.Ltd., Divisional Office, Sagar -vs- Smt.Luviza Fernandis and Others*, reported in 2011 (4) KCCR 2954 (DB) where under similar fact situation, the view expressed is as under:-

*“MOTOR VEHICLES ACT, 1988 –Sections 166 and 173-Motor Vehicle Accident –Tempo Trax coming from the opposite direction dashed against the Motor Cycle of the deceased and both the deceased and pillion rider fell on the road –Due to his sudden fall, the Bus coming behind them ran over the deceased –Tribunal fixed liability on insurers of both the vehicles, of the Bus and Trax-Challenge in appeal as to the liabilities of insurance companies – In the claim petition filed by the pillion rider, the entire compensation was saddled on the insurer of the tempo trax and it satisfied it. Held, insurer of the Tempo Trax was alone liable in the present case also.”*

12. Accordingly, the aforesaid two appeals are disposed of as under:

(i) The appeal filed by the claimants in MFA.No.8513/2015 seeking enhancement of compensation and also seeking shifting of liability to pay entire

compensation on 2<sup>nd</sup> respondent – insurer of tractor-trailer does not merit consideration, hence the same is dismissed.

(ii) While doing so, the appeal filed by the 2<sup>nd</sup> respondent-insurer of tractor-trailer in MFA No. 9098/2015, where the appellant had sought for reconsideration of the compensation amount and also shifting the liability to pay entire compensation on the owner and insurer of motor cycle is allowed in refixing the compensation payable to claimants in MVC.No.5992/2013 in a sum of Rs.7,96,000/- as against Rs.12,85,000/- awarded by the Tribunal and the liability to pay entire compensation is fastened on the owner and rider of motor cycle.

(iii) Since the rider is not made as a party in this proceedings and he being *tort-feasor*, the owner of the motorcycle who is saddled with the liability to pay compensation is entitled to recover the same from the rider of the motor cycle, Vishal M. Jain, who has adduced evidence as PW.2 in MVC.No.5992/2013.