

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE ^{6TH} ~~5TH~~ DAY OF APRIL 2010

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

M.F.A. NO.13585/2007

A/W. M.F.A. NO.13584/2007 (MV)

BETWEEN :

Kumaraswamy Reddy
S/o. Bhaskar Reddy
Aged about 37 years
No.27, 7th 'A' Main
8th Cross, Srinidhi Layout
Chunchaghatta
Bangalore - 62

..APPELLANT
(COMMON IN BOTH APPEALS)

(By Sri. K. Srihari, Adv.)

AND :

IN M.F.A. NO.13585/2007

S. Govardhan
Aged B.K. Satyanarayana
R/a. No.7/1, C.C. Nagar
1st Cross, Shanthinagar
Opp. Sub Jail, Hosur 635 109

IN M.F.A. NO.13584/2007

1. T.P. Srinivasan
S/o. Padmanabha Shetty
Aged about 51 years

* Corrected
vide
chamber
order dtd
18-12-2013.

PS KAKJ

2. Smt. Anandalakshmi
W/o. T.P. Srinivasan
Aged about 43 years

R/a. No.6040, D Tank Street
Hosur, Krishnagiri District

..RESPONDENTS

(By Sri. K.P. Pradhan, Adv. for
Sri. K.T. Guruprasad, Adv.)

These appeals are filed u/s.173(1) of MV Act against the judgment and award dated 8.5.2007 passed in MVC NOs.3524/2006 and 3523/2006 on the file of the Member, MACT, Metropolitan Area, Bangalore.

These appeals coming on for *Hearing* this day, the Court delivered the following:

J U D G M E N T

The respondent before the tribunal is in appeals before this Court questioning the correctness and legality of the common judgment and awards passed in MVC Nos.3523/2006 and 3524/2006 dated 8.5.2007 whereunder the claim petitions came to be allowed in part.

2. The facts in nut-shell are as follows:

On 18.11.2005 at about 6.30 p.m. one Chandrashekar @ Shekar along with one Govardhan as pillion rider was



proceeding on a motor cycle bearing registration No.KA-05-EY-1814 on chandapura-Bangalore Main Road towards Bangalore side and when the vehicle came near SKF U-Turn, it was contended that a road roller driven in a rash and negligent manner dashed from behind to the said motor cycle driven by Chandrashekar @ Shekar and he died at the spot and pillion rider Govardhan is said to have sustained multiple injuries. On account of death of Chandrashekar @ Shekar, his legal heirs namely father and mother filed a claim petition in MVC No.3523/2006 u/s.166 of IMV Act, 1988, claiming a total compensation of Rs.10,00,000/-. Likewise, the injured namely Govardhan, who was a pillion rider in the said vehicle filed a claim petition in MVC No.3524/2006 u/s.166 of IMV Act, 1988, claiming a total compensation of Rs.3,00,000/- for the injuries sustained by him. On service of notice, the respondent appeared and filed statement of objections denying the petition averments.

3. On the basis of pleadings, tribunal framed the following issues for its determination:

1. Whether the petitioners in both the cases prove that, on 18.11.2005 at 6.30 p.m., on SKF



U-Turn on Bangalore-Hosur Main Road, on NH-7 Road, they met with an accident and deceased in MVC No.3523/2006 succumbed to it and petitioner in MVC NO.3524/2006 sustained injuries, was due to actionable negligence act on the part of driver of road roller as alleged ?

2. Whether the petitioners are entitled for compensation ? If so, how much and from whom ?

3. What order ?

4. The 2nd claimant-mother of the deceased in MVC No.3523/2006 was examined as P.W.1 and got marked Exs.P.1 to 12. The injured Govardhan who had filed MVC No.3524/2006 got himself examined as P.W.2 and also got marked documents as per Exs.P.13 to 16. The claimant in MVC No.3524/2006 (Govardhan) also examined the doctor, who had treated him, as P.W.3 and through the said witness namely, doctor, they got marked Exs.P.17 to 19. On the basis of the pleadings and evidence on record, tribunal by its judgment and awarded dated 8.5.2007 allowed the claim petitions in part and in MVC No.3523/2006 tribunal awarded a compensation of Rs.3,81,000/- and in MVC No.3524/2006 tribunal awarded a compensation of



Rs.1,20,500/- with interest at 6% p.a. from the date of petition till the date of payment. It is these judgment and awards which are challenged in the present appeals.

5. I have heard Sri. K. Srihari, learned Counsel appearing for the appellant and Sri. K.P. Pradhan, learned Counsel appearing on behalf of for Sri. K.T. Guruprasad for respondents.

6. Sri. Srihari, learned Counsel for the appellant in both cases would contend that accident in question has not occurred on account of negligence of driver of road roller owned by the respondent before tribunal. In order to prove this point, he has drawn attention of the Court to the evidence of P.Ws.1 and 2 to contend that admittedly, motor bike was driven at a speed of 60 to 65 kms. per hour and road roller was driven at a speed of 8 to 10 kms. per hour and by no stretch of imagination, road roller could have dashed against motor cycle and hence accident in question has not occurred. He would also draw attention of the Court to the evidence of doctor P.W.3 namely cross examination wherein doctor has admitted that if a person falls to the



right side, injuries would be to the right side parts of his body and if a person falls on left side, then left side parts of his body will be injured. In view of the admission of P.W.2 in his cross examination at page No.3, that he had fallen from motor cycle to right side itself would demonstrate that accident in question could not have occurred and accordingly submits that accident in question cannot be held to have occurred on account of actionable negligence of driver of road roller. He would elaborate his submission by drawing attention of the court to Ex.P.4 namely IMV report to contend that a perusal of the same would reveal that only the front portion of vehicle has been damaged and as such, the say of claimant that road roller had hit the motor cycle from behind cannot be accepted. He would rely upon Ex.P.3 namely PM report to contend that if the claimant's contentions were to be accepted that accident in question had occurred on account of negligent driving of road roller, it would reveal from PM report that head which was crushed under the wheel of road roller had not become flat and as such, by common prudence it cannot be held that deceased was crushed under the wheels of road roller. He would submit that on probability of the case, it has to be held that



accident in question has not occurred on account of negligence of driver of road roller. Accordingly, he seeks for allowing of appeals and to set aside the order of tribunal. As an alternate plea, he would submit that in the event this Court were to come to a conclusion that on account of non examination of driver of road roller was fatal, appeals may be remanded to tribunal with a liberty to appellant herein to lead evidence and prove his defence. He also submits that compensation awarded under various heads is exorbitant and not commensurate with the injuries sustained by P.W.2 or compensation awarded to the legal heirs of the deceased Chandrashekar @ Shekar.

7. Per contra, Sri. Pradhan, learned Counsel for the respondents by supporting the judgment and awards passed by tribunal would contend that admittedly, R.Ws.1 and 2 who have been examined by respondent to substantiate their defence are the eye witnesses to the accident. Their evidence cannot be accepted since they were not personally present at the spot when accident in question has occurred. On the other hand, he would rely upon evidence of P.W.2 namely, the injured Govardhan to contend that he was the best



person to speak about the nature and manner in which accident has occurred and this fact having accepted by tribunal does not require to be set aside as contended by learned Counsel for the appellant since nothing is elicited in the cross examination. He would also submit that appellant herein has not let in evidence before tribunal. He would also submit that judgment and awards passed by tribunal has to be confirmed by applying "**principles of strict liability**" and it does not call for any interference and seeks for dismissal of appeals.

8. Having heard learned Counsel for the parties, the following points arise for my consideration:

- 1) Whether the Tribunal was justified in holding that accident in question has occurred on account actionable negligence of driver of road roller ?
- 2) Whether finding of tribunal on this issue is based on sound appreciation of evidence or it requires any interference at the hands of this Court ?
- 3) Whether compensation awarded by tribunal by its judgment and awards passed in MVC Nos.3523/2006 and 3524/2006 dated 8.5.2007 is



just and reasonable or it requires to be modified/reduced, if so to what extent ?

4) What order ?

9. Re. Point Nos.1 and 2:

Since, these two points are inter-linked with each other, same are taken up for consideration by this Court. In order to appreciate arguments/submissions made by the appellant's counsel, it would be relevant to note the defence set up by appellant herein before tribunal in his written statement. The relevant defence in so far as the contention with regard to non-occurrence of accident is concerned is to be found in paragraph 5 of written statement in both cases. In MVC No.3523/2006, statement of objection reads as under:

“ The respondent's vehicle was driven by his driver by observing all the traffic rules. The rider of the two wheeler came in a rash and negligent manner and overtook the road roller from right side and hit the front wheel of the road roller and by his act of hitting the front wheel of the road roller, the two wheeler fell and thereby the said accident took place, it is not negligence on the part of the driver of the car or



the road roller was not driver by its driver in a rash and negligent manner. The said accident is not caused by the road roller but it is due to the negligence on the part of the rider of the two wheeler. He said act can be looked into from the sketch produced by the petitioners before this Hon'ble Court. "

10. In so far as defence set up in MVC No.3524/2006, it reads as under:

"The respondent's vehicle was driven by its driver observing all the traffic rules, and the petitioner was not at all working in a provision store as stated in column No.5 of the petition and he is a resident of Bangalore and aged 20 years and he was no earning income as stated in column No.6 and there is no any loss of income. There was no any injuries on the body of the petitioner as stated in the petition. It is only to get compensation, the petitioner purposely filed the above claim petition claiming exorbitant compensation from the respondent. The injuries might have occurred due to some other incident in Bangalore and he was not coming to Bangalore along with Chandrasekhar in the said two wheeler. That apart he was admitted to hospital on 19.11.2005 whereas the accident alleged took place on 18.11.2005. "



11. In examination in chief of R.W.1 at paragraph 6 (which is a common evidence let in by R.W.1), he has stated to the following effect:

“ I submit that the deceased **Chandrashekar might have ridden his vehicle** in a rash and negligent manner endangering to human life and when he could not control the speed of the vehicle two wheeler he jumped from tar road to mud road in order to overtake the road roller from right side and his two wheeler skid on the mud road and he fell down on the left side due to his overtaking his vehicle and hit the culvert and **his head might have hit the culvert**, due to said impact, he succumbed and the **pillion rider might had got multiple injuries**. The said accident is not due to the rash and negligent driving of the road roller and more over road roller will not run more than 5 to 6 k.m. per hour.”

(Emphasis supplied)

12. As against this evidence, the only eye witness to the accident is pillion rider namely Govardhan and he has been examined as P.W.2 in MVC No.3524/2006. In the



examination in chief, he states that motor bike was being driven by deceased Chandrashekar in a careful and cautious manner on the left side of the road and when they reached SKF U-Turn, at that time, a road roller driven in a rash and negligent manner came from behind and dashed against motor cycle. As a result of the accident, rider and himself fell down and he sustained multiple injuries.

13. Though feeble defence has been set up by the respondent before tribunal that accident in question has not occurred on account of road roller for reasons best known, the respondent has failed to examine the driver of road roller. Non examination of driver of road roller would establish the fact that best evidence available to appellant-respondent to substantiate his defence has been withheld and adverse inference has to be drawn against respondent. Even otherwise, as has been canvassed by learned Counsel for respondent to examine the records produced by claimants to ascertain whether accident in question had occurred or not, this Court has re-examined and re-appreciated the evidence tendered by both parties and also perused the judgment and awards passed by tribunal.



14. The tribunal at paragraph 17 of its judgment while considering mahazar and sketch (Exs.P.5 and P.6) drawn by police authorities has found that road roller was on Bangalore-Hosur road on the date of accident at the relevant point of time and place of accident. As per mahazar Ex.P.5, the road roller and motor cycle was alone on tar road and not on mud road as contended by R.W. 1 in his evidence. There is no iota of evidence let in by respondent to demonstrate that driver of motor bike was driving in a rash and negligent manner as contended. If it were to be so, as observed herein above, it was for driver of road roller to tender evidence as to how the accident in question had occurred and in that back ground, the defence set up respondent before tribunal could have been re-examined. In the absence thereof, tribunal was justified in coming to a conclusion that road roller had hit motor cycle from behind due to impact the motor cycle has fallen on right side of the road and road roller there afterwards stopped at few feet distance from motor cycle. Another aspect which requires to be noticed is the evidence of R.W.1 namely owner of road roller. He has stated in the cross examination dated



29.3.2007 that driver of road roller informed him about the accident over phone. If it was case of driver of road roller that accident had not occurred he could have said so and this could have been spoken to by R.W.1 In fact, R.W.1 in his cross examination admits that he does not know as to whether care and caution has been taken by driver of road roller. In his own words, it reads as under:

"I do not know correctly how the accident took place and as such, I cannot say that if my driver had taken more caution, accident would have been avoided. I have taken the photographs of the accident spot and I have produced them to the court."

15. In view of this overwhelming evidence, this Court is not inclined to accept contention raised by learned Counsel for appellant that accident in question has not occurred on account of actionable negligence of driver of road roller.

16. In so far as the contention raised by learned counsel for appellant with regard to PM report at Ex.P.3 to contend that in the event of head of deceased had come



below wheel of road roller it would have become flat, cannot be accepted for the following reasons:

- a) PM report at Ex.P.3 would reveal that on the dead body being brought to mortuary for conducting PM, it is noticed as follows:

Dead body is that of a male measuring 169 cms. In length, brown complexioned moderately built and moderately nourished. Rigor mortis present all over the body and faint livor mortis present over the back. Head is crushed from side to side. Blood stains present over scalp, face, neck and feet.

17. It has come in the evidence of P.W.2 that admittedly deceased was wearing a helmet. As per evidence of R.W.1 road roller was proceeding at 8-10 kms and motor bike was at a speed of 60-65 kms. is to be accepted and on account of the accident in question, the driver of road roller would have naturally and instantaneously applied brakes, which does not unnecessarily mean that injured went below wheels of road roller totally. In the absence of evidence of driver, the contents of PM report cannot be held and concluded that accident in question has not occurred. In



these circumstances, this court is not inclined to accept submissions made by learned counsel for the appellant. Accordingly, same is rejected. In view of the above, point Nos.1 and 2 formulated herein above are answered against appellant and it is held that accident in question has occurred on account of actionable negligence of driver of road roller.

18. Re. Point No.3:

The contention of learned counsel for the appellant that compensation awarded by tribunal under various heading is exorbitant, is considered by this Court on reappraisal of evidence.

In **MVC No.3523/2006**, legal heirs of deceased Chandrashekar namely father and mother had filed claim petition and same had been allowed in part by awarding compensation of Rs.3,81,000/- under the following heads:

Loss of dependency	Rs.3,36,000-00
Loss of love and affection	Rs. 15,000-00
Funeral and obsequies	Rs. 10,000-00
Loss of estate	Rs. 15,000-00



Transportation of dead body	Rs. 5,000-00
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TOTAL	Rs.3,81,000-00
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19. While arriving at loss of dependency, tribunal has taken into consideration that deceased was running mobile store and also having mobile phone outlets and held that he was earning Rs.4,000/- p.m. (claimants contend that he was earning Rs.5,000/- p.m.). In support of this claim, the claimants had produced statement of bank account of Vysya Bank as per Exs.P.10 to 12. Ex.P.10 is the partnership deed which discloses that deceased with another partner was running a firm by name 'Friends Mobile Gallery' and this clearly establishes the fact that he was doing business in mobile phones. By considering this fact as the business carried on by deceased and by taking into consideration Ex.P.10, tribunal has arrived income of the deceased at Rs.4,000/- p.m. Considering the age of the mother, appropriate multiplier of 14 has been applied and this Court does not find any reasonable ground to take a different view from what has been taken by tribunal and accordingly, it is held that compensation awarded by tribunal in MVC



No.3523/2006 does not call for interference and compensation awarded is just and reasonable.

20. In **MVC No.3524/2006**, tribunal has awarded compensation of Rs.1,20,500/- under the following heads:

Pain and agony	Rs. 30,000-00
Medical Expenses	Rs. 36,000-00
Loss of income during Treatment	Rs. 4,500-00
Unhappiness & Loss of amenities	Rs. 50,000-00
TOTAL	Rs.1,20,500-00

21. The tribunal while awarding the above said compensation has found as per Ex.P.13 wound certificate that claimant had sustained fracture of left acetabular roof, anterior dislocation of left femoral head and was inpatient at HOSMAT hospital from 19.11.2005 to 23.11.2005 and had undergone surgery by way of closed reduction and high tibial skeletal traction on 19.11.2005. It is also found by tribunal that as per Ex.P.18-OP record, claimant had taken further



treatment in HOSMAT hospital. On account of said injuries sustained, the claimant was unable to carry on his normal duties for about 3 months and considering this aspect the tribunal has awarded a compensation of Rs.30,000/- under heading pain and agony which according to this Court on reappreciation of evidence is to be held just and reasonable. In so far as the claim towards medicine, hospital charges, tribunal after considering medical bills produced at Exs.P.15 and 16 amounting to Rs.32,754/- has awarded a sum of Rs.36,000/-. Towards loss of income during treatment period, a sum of Rs.4,500/- has been awarded. The compensation awarded under these heads cannot be said to be exorbitant considering number of days of hospitalisation, nature of injuries as well as treatment obtained by claimant. In so far as compensation of Rs.50,000/- awarded towards for unhappiness and loss of amenities in life, the tribunal has found that on consideration of evidence of P.W.3 which is to the effect that claimant is unable to carry on normal actives like sitting, standing for long time, squatting, walking fastly, climbing stairs and using Indian toilets and movement of the left foot are restricted and painful and he cannot bear full weight on the left leg, which according to



this Court on reappreciation has to be held as just and reasonable and not exorbitant as contended by learned Counsel for the appellant. In view of the discussion made herein above, this Court is of the opinion that compensation awarded by tribunal in MVC Nos.3523/2006 and 3524/2006 is just and reasonable and does not call for any interference in these appeals.

22. Re. Point No.4:

In view of the above discussion, the following order is passed:

- a) The appeals are dismissed. Judgment and awards passed in MVC No.3523/2006 and 3524/3006 dated 8.5.2007 by MACT, Court of Small Causes, Bangalore are hereby confirmed
- b) The amount in deposit if any is ordered to be transmitted to the jurisdictional tribunal for disbursement.
- c) No order as to costs.

Sd/-
JUDGE

Cs