



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 11TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE C.M. JOSHI

MISCL. FIRST APPEAL NO.200199/2021(MV-I)

BETWEEN:

THE MANAGER,
SHRIRAM GENERAL INSURANCE CO. LTD.,
E8, EPIP, SITAPUR INDUSTRIAL AREA JAIPUR,
RAJASTHAN-302 022,
THROUGH ITS DIVISIONAL MANGAR,
DIVISION OFFICE,
GULBARGA,
(VIDE POLICY NO.10003/31-14/045011
VALID FROM 13-04-2013 TO 12-04-2014),

PRESENTLY REPRESENTED BY
ITS AUTHORIZED SIGNATORY
DEPUTY MANAGER,
SHRIRAM GENERAL INSURANCE CO. LTD.,
NO.3/5, 3RD FLOOR, S V ARCADE,
BILEKAHALLI ROAD, IIM POST,
BENGALURU-560 076.

...APPELLANT

(BY SRI SUDARSHAN M., ADVOCATE)

Digitally signed
by
LUCYGRACE
Location: HIGH
COURT OF
KARNATAKA



AND:

1. SMT. RUKMINIBAI
W/O LATE DIGAMBER ROOPNURE,
AGE: 71 YEARS, OCC: HOUSEHOLD,
2. SADHANA @ SAJANA
D/O LATE SHANKAR RAO RUPNURE,
AGE: 27 YEARS, OCC: STUDENT,
3. LAVANYA
D/O LATE SHANKAR RAO RUPNURE,
AGE: 26 YEARS, OCC: STUDENT,
4. SAIKIRAN
S/O LATE SHANKAR RAO RUPNURE,
AGE: 19 YEARS, OCC: STUDENT,
5. ABHISHAKE @ ABHLASHA
S/O LATE SHANKAR RAO RUPNURE,
AGE: 17 YEARS, OCC: STUDENT (MINOR),
RESPONDENT NO.5 IS MINOR UNDER
GUARDIANSHIP OF PATERNAL GRANDMOTHER
RESPONDENT NO.1,

ALL ARE RESIDING AT VILLAGE SHRIMANDAL,
TALUK BIDAR,
DIST. BIDAR-585 401.

6. RAJU PASUPULETI S/O PRASAD,
AGE: MAJOR, OCC: BUSINESS,
R/O 47-2-57, BETHELEMPERAPALAKOLE,
PALAKOL WEST GODAVARI PALKOL,
ANDHRA PRADESH, (OWNER OF DCM VAN



BEARING REGISTRATION NO.AP-37/TA-7801),
PIN CODE 534 260.

7. SRINIVAS REDDY,
M.H.NO.4-41-168, NO.2, PAPIREDDY NAGAR,
KUKKATPALLI,
R.R. DIST (T.S),
(OWNER OF TANKER ASHOK LEYLAND
NO.AP-28/X-7939),
PIN CODE 500 072.

8. THE BRANCH MANAGER,
UNITED INDIA INSURANCE CO. LTD.,
HEAD OFFICE-24, WHITE HOUSE ROAD,
CHENNAI-600 041,

HAVING ITS BRANCH OFFICE,
AT BASVESHWAR TOWERS,
KEB ROAD, OPP. GUYDGE HOSPITAL,
STADIUM ROAD,
BIDAR-585 401.

(VIDE POLICY NO. 0505003113P101520034,
VALID FROM 17-06-2013 TO 16-06-2014
IN RESPECT OF TANKER ASHOK LEYLAND
NO.AP-28/X-7939), PIN CODE 600 041.

...RESPONDENTS

(BY SRI SHIVANAND PATIL, ADV., FOR R8;
SRI BASAVARAJ R. MATH, ADV., FOR R2 TO R5;
R1 AND R6 ARE SERVED;
R7-V/O. DTD. 04.09.2024, NOTICE HELD SUFFICIENT)



THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, CALL FOR THE RECORDS, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 04.06.2020 PASSED IN MVC NO.525/2014 BY THE PRL. SENIOR CIVIL JUDGE AND CJM AND ADDL. MACT, AT BIDAR.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. JOSHI

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. JOSHI)

1. Heard learned counsel appearing for the appellant - Shriram General Insurance Co. Ltd., and the learned counsel appearing for the respondent Nos.2 to 5-petitioners. The other respondents are unrepresented.

2. Though the matter is slated for admission, with the consent of both the sides, it is taken up for final disposal.

3. Being aggrieved by the judgment and award dated 04.06.2020 passed in MVC No.525/2014 on the file of the Court of the Principal Senior Civil Judge and C.J.M. and Additional M.A.C.T., Bidar, (for short 'the Tribunal'),



respondent No.2 before the Tribunal, has approached this Court in this appeal assailing fastening of entire liability on it.

4. The parties would be referred to as per their ranking before the Tribunal for the sake of convenience.

5. The factual matrix of the case that is relevant for the purpose of this appeal is as below:

a) The petitioners before the Tribunal are the claimants and dependents of one Shanker Rao, who died in a road traffic accident that occurred on 20.10.2013. The deceased Shankar Rao was driving the TATA ACE Auto Trolley, bearing No.AP-28/X-6685 owned by him, with load of glass from Hyderabad to Vijayawada. He was driving the same at about 4.00 a.m., and near Rangapuram on National Highway No.65 a tanker lorry bearing No.AP-28/X-7939 was proceeding in front of his vehicle and the driver of the said tanker abruptly applied the brakes, since, a Eicher DCM Van bearing No.AP-37/TA-7801 which was proceeding in front of the tanker turned turtle suddenly and fell down on the road. Though the tanker did not collide with the DCM Van, the



deceased, who was driving the goods trolley auto rickshaw could not control his vehicle and dashed against the backside of the tanker lorry, as a result, he sustained injuries and died in the accident.

b) A case was registered in FIR No.280/2013 and after investigation, the Kodad Police filed charge-sheet against the DCM Van driver, who drove the vehicle negligently and made it to turn turtle on the road itself. The petitioners claimed compensation against all the tort-feasors, *i.e.*, the owner and insurer of the DCM Van as well as the owner and insurer of the tanker lorry.

c) Respondent No.1, the owner of DCM Van on being served with the notice did not appear before the Tribunal. The other respondents appeared before the Tribunal on being served with the notice.

d) Response No.2, the insurer of the DCM Van contended that there were violation of the terms and conditions of the policy by respondent No.1, the owner of the



DCM Van, as the driver was not having a valid driving license, etc., and resisted the claim petition.

e) Respondent No.2 also contended that the deceased had not kept safe distance between his vehicle and that of the tanker and therefore, the negligence was on the part of the deceased Shankar Rao, hence, it sought for dismissal of the petition.

f) On the basis of the pleadings, the Tribunal framed appropriate issues. The 2nd petitioner was examined as PW1 and two witnesses were examined as PWs.2 and 3. Exs.P1 to 6 were marked through their evidence. The official of the 2nd respondent was examined as a RW1 and another witness was examined as RW2 and Exs.R1 and R2 were marked in evidence.

g) After hearing the arguments, the Tribunal awarded compensation of Rs.12,11,250/- and fastened the liability on respondent No.2 to pay the compensation amount. The Tribunal rejected the contention of respondent



No.2 that there was contributory negligence on the part of the deceased and also on the part of the tanker lorry.

6. Being aggrieved by the said judgment, respondent No.2 – Insurance Company is before this Court in appeal.

7. The learned counsel appearing for the appellant Insurance Company contends that the deceased Shankar Rao should have maintained a safe distance between his vehicle and that of the tanker lorry, therefore, it was due to the negligence on the part of the deceased himself that the accident has occurred. He submits that there was contributory negligence on the part of the deceased as well as the driver of the tanker (respondent Nos.3) and therefore, the Tribunal erred in holding the entire negligence on the part of the DCM Van. In this regard, he places reliance on the judgment in the case of ***NISHAN SINGH AND OTHERS Versus ORIENTAL INSURANCE COMPANY LIMITED***¹.

¹ 2018(6) Supreme Court Cases 765



8. *Per contra*, learned counsel appearing for respondent Nos.2 to 5-claimants submits that the Police after the investigation have filed the charge-sheet against the DCM Van driver as finding negligence on his part. He submits that the tanker lorry as well as the Auto Trolley of the deceased were moving at a slow pace and due to sudden turning turtle of Eicher DCM Van the accident has occurred and therefore, no fault can be found with the judgment of the Tribunal in fastening the entire liability the owner and the insurer of the DCM Van. He submits that the testimony of PWs.2, 3 and RW2 clearly show that there was no time gap between the DCM Van turning turtle and the collision between the tanker lorry and the TATA ACE Auto Rickshaw. Therefore, he submits that the impugned judgment is proper and correct and no fault can be found with the same.

9. Having heard the learned counsels for appellant and respondent Nos. 2 to 5 and perusal of the records, the only question that arise in this appeal is, whether there was any contributory negligence on the part of the deceased?.



10. A perusal of testimony of the PW3 – Venkat S/o. Shesha Rao, who was an eyewitness to the incident and also a driver of another vehicle, which was coming behind the TATA ACE auto rickshaw of the deceased, discloses that the DCM Van bearing No.AP-37/A-7801 was being driven in negligent manner and the said vehicle turned turtle, as the driver lost control over the vehicle; soon after it turned turtle, the tanker lorry of respondent No.3 which was behind the DCM Van had to stop it in order to avoid the collision; therefore, the tanker driver abruptly and suddenly applied the brakes and controlled it. His evidence further discloses that the deceased Shankar Rao who was driving the TATA ACE auto rickshaw loaded with glass had to apply the brakes, but he could not control the same and as such, he rammed into the backside of the tanker. In the cross-examination, it is elicited that the distance between the DCM Van and the tanker lorry was about 10 feet and there was no collision between the DCM and the tanker lorry. The cross-examination also discloses that that there was a distance of 20 feet between the auto rickshaw and the tanker and the



speed of the vehicles were about 40 to 45 kilo-metres per hour. It is pertinent to note that when the distance between the two vehicles which collided *i.e.*, the tanker and the TATA ACE auto rickshaw was about 20 feet and both the vehicles were loaded, the tanker could stop without colliding with DCM Van. However, the auto rickshaw being loaded with glass, it could not stop within a distance of 20 feet and therefore, it rammed into the back of the tanker lorry. It is pertinent to note that the distance between the auto rickshaw of the deceased and the tanker lorry though was about 20 feet, due to sudden application of the brakes by the tanker lorry, the deceased could not stop his vehicle. Evidently, the incident had occurred at about 4.00 a.m. It is also relevant to note that the deceased could not see the front of the tanker and the turning turtle of the DCM Van and as such, despite he made his effort, he could not stop his vehicle.

11. The testimony of RW2, who is the owner of the DCM Van discloses that the said vehicle had turned turtle across the road and he admits that he reached the spot after



about 4 to 5 hours of the accident. Therefore, when we compare the testimonies of RW2 and the testimony of PW3, that of PW3 gains importance he being an eyewitness to the accident.

12. The charge-sheet against the driver of the vehicle owned by respondent No.1 would show that since, the tanker driver applied the brakes suddenly observing the turning turtle of the DCM Van and the deceased could not control his vehicle and he dashed against the back of the tanker. The charge-sheet is in consonance with the testimony of PW3. Therefore, it is evident that if the driver of respondent No.1 was diligent and he had exercised precautions, his vehicle could not have turned turtle. As a result of the negligence of the driver of respondent No.1, the tanker had to apply the brakes suddenly, resulting the deceased ramming in to the back of the tanker. The distance between the tanker and the auto rickshaw being about 20 feet, it cannot be said that there was negligence on the part of the deceased also. Obviously, the chain of collisions had started due to negligence of DCM Van driver.



13. The judgment of the Apex Court in the case of **NISHAN SINGH** referred supra observes that the regulation No.23 of the Rules of Road Regulations, 1989, lay down that the driver of the motor vehicle moving behind another vehicle shall keep a safe distance from that of the other vehicle to avoid collision. If the vehicle in the front should suddenly slow down or stop, evidently, the sudden application of the brakes by the tanker and the deceased being at a distance of about 20 feet shows that there was precaution by the deceased. It is also relevant to note that it is not the case of respondent Nos.1 and 2 that the tanker had at any time overtaken the TATA ACE auto rickshaw of the deceased, therefore, when the vehicles were moving at a slow speed, on the sudden application of the brakes by the tanker and the consequent accident between the auto rickshaw of the deceased can be attributed solely to the negligence of the driver of the DCM Van, owned by respondent No.1.

14. The conclusions of the Tribunal as may be found in Para No.10 cannot be termed to be either perverse or



capricious. The Tribunal has applied its mind and has come to a conclusion that there was negligence on the part of the vehicle owned by respondent No.1. The Tribunal had the advantage of seeing the demeanor of the witnesses, particularly, the eyewitness to the accident and therefore, the opinion of the Tribunal cannot be interfered with.

15. Regarding a quantum of compensation, a feeble attempt is also made by the learned counsel for the appellant to contend that the Tribunal has erroneously taken the notional income of the deceased at Rs.7,500/- per month and it is on the higher side. Considering the fact that the notional income of Rs.7,000/- is prescribed under the guidelines issued by the Karnataka State Legal Services Authority for the purpose of settlement of dispute before the Lok Adalat and the fact that the deceased was owner-cum-driver of the TATA ACE auto rickshaw, he being a person aged about 42 years, this Court do not find any reason to interfere with the conclusions of the Tribunal that he had a



notional income of Rs.7,500/- per month. This ground is also not sustained in law.

16. In the result, the appeal is bereft of any merits and the same is dismissed.

17. Amount in deposit before this Court is ordered to be transmitted to the Tribunal.

Sd/-
(C.M. JOSHI)
JUDGE

SBS
List No.: 1 Sl No.: 53
CT: AK