

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF MARCH, 1998

BEFORE:

THE HON'BLE MR. JUSTICE M.P. CHINNAPPA

M.F.A. NOS.782/94 & 2964 OF 1996

M.F.A. NO. 782/94

Between:

M/s. New India Assurance Co. Ltd.,
Unity Buildings Annexe
Mission Road
Bangalore 560 027.

Appellant

(By advocate Sri.K.Suryanarayana Rao)

And:

1. N.C. Shivalingaiah
s/o Chikkamogegowda
26 years
r/a Nagarakere
Maddur Tk.,
Mandya Dist.

2. A. George
s/o Asheervadhan
Major in age
Hosahalli
Bedavana, Mandya

3. C. Mangala
w/o G. Puttaswamy
Major in age
Ex-Municipal President
No. 100, 3rd Cross
Subhashnagar
Mandya

4. G.P. Bhakthavatsala
s/o G. Puttaswamy
Major in age
r/a No. 2006,
3rd Cross, Subhasnagar
Mandya.

Respondents

(By Advocate Sri.C.S. Shanthamallappa
for R-3 & R-4)

(By Advocate Smt. S. Ratnamala for R-1)



M.F.A. 2964/96

1. C. Mangala
w/o G. Puttaswamy
Major
Ex-Municipal President
No. 100, 3rd Cross
Subhashnagar, Mandya.

2. G.P. Bhakthavatsala
Major
s/o G. Puttaswamy
D. No. 2006,
3rd Cross
Subhashnagar
Mandya Appellants

(By Advocate Sri. P.R. Ramesh)

And:

1. N.C. SHIVALINGAIAH
S/o Chikkamoge Gowda
Major
P/O Nagarakere
Maddur Tk.

2. The Manager
New India Assurance Co. Ltd..
M.C. Rd., Mandya.

Respondents

(By Advocate Sri. K. Suryanarayana Rao - R-2)

These M.F.As. are filed U/s.110-D of the M.V. Act, against the Judgment and award dt.12.10.93 passed in M.V.C. No.415/89 on the file of the Addl. Dist. Judge & Member, MACT, Mandya, partly allowing the claim petition for compensation.

These M.F.As. coming on for hearing this day, the Court delivered the following:

C O M M O N J U D G M E N T

The brief facts leading to these two appeals are that one Shivalingaiah, 1st respondent herein, met with a road accident on 28.4.89 at 9.15 a.m. while he was travelling in the bus bearing No.MYN 3485 on Nagarakere Tank Bund Rd., in Mandya Dist., due to rash and negligent driving of the bus by the driver R-2 in MFA

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No. 782/94 A. George, owned by one Mangala and the same was insured with the New India Insurance co. The insured filed a claim petition before the Addl. Dist. Judge & MACT., Mandya in MVC. No. 415/89 claiming compensation. The claim was resisted by the respondents therein and ultimately on 12.10.93 the learned Dist. Judge & MACT. passed an award holding that the claimant is entitled for a total compensation in a sum of Rs. 85,000/- with interest at 6% and costs. Being aggrieved by that Judgment and award, the owner of the vehicle preferred MFA. 2964/96 questioning only the quantum of compensation awarded by the Tribunal. Similarly the insurance company preferred MFA 782/94 questioning its liability to pay the compensation in excess of Rs. 30,000/-. The claimant has not preferred any appeal.

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2. Heard the learned counsel for both parties.

3. The first question that arises for consideration is as to whether compensation awarded is on the higher side. The learned Tribunal has awarded the following compensation:

Pain and suffering	Rs.15,000/-
Disability	Rs.10,000/-
Loss of amenities	Rs.10,000/-
Medical expenses	Rs.20,000/-
Injuries	Rs.30,000/-

Total	Rs.85,000/-

According to the owner, the compensation awarded is on the higher side. It is established by the claimant that he has sustained fracture of right tibia and fibula. According to the evidence of Dr. Hanumanthaiah, Chief Orthopaedic Surgeon of Jayanagar Orthopaedic Centre, he treated Shivalingaiah who was admitted to the hospital on 1.5.89. He had sustained a compound comminuted fracture of right leg. On 2.5.89 a surgery was done. Subsequently, on 23.5.89, another surgery was done. He was discharged from hospital on 30.5.89. The treatment was followed upto 27.6.89. On that day the implants were removed and he was advised further treatment and follow up. The doctor examined him on 15.3.93 and advised him active exercise and physio therapy. According to him, the claimant was going for check-up and he found when he examined him recently inability to move the right knee and a limp. Thus he opined that there is a disability of 30% so far as the limp is concerned. However, according to him he can attend his regular work with little difficulty. Ex.P-46 is the case sheet. On the basis of this evidence, the learned Tribunal has awarded a compensation as indicated above. As far as the amount awarded towards pain and suffering, disability, loss of amenities, medical expenses are concerned, the learned advocates have not seriously disputed.

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4. However, the learned advocates vehemently argued that the claimant has produced only bills for Rs.6,725/- whereas, the learned Tribunal has awarded a sum of Rs.20,000/- towards expenses. In this case as stated above, the claimant had to undergo two major operations and implants were removed. When he was in the hospital, naturally someone had to attend on him and he had to take nutritious food for better healing. Under those circumstances, I am of the view that a sum of Rs.20,000/- awarded towards medical expenses in this case cannot be held to be on the higher side. Besides all this, the Tribunal has awarded a sum of Rs.30,000/towards injuries. When the Tribunal has awarded Rs.15,000/- towards pain and suffering, there cannot be any amount to be awarded for injuries sustained by the claimant. This is an additional amount awarded without any basis. Therefore, that amount will have to be deducted as rightly pointed out by the learned advocate appearing for the appellants. Therefore, I hold that the appeal MFA. No. 2964/96 will have to be allowed in part.

5. The learned counsel for the insurance company has submitted that the liability of the insurance company is only to the extent of Rs 30,000/- as the claimant was a passenger in the bus which met with an accident. Insurance policy was produced along with the objection statement before the Tribunal. As could be seen from this, the premium was paid at

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Rs.1170/- calculated at 39 passengers at the rate of Rs.30/- per passenger. According to the tariff, since Rs. 30/- is paid, the risk covered per passenger is Rs. 30,000/-. This question also was considered by the Hon'ble Supreme Court in a judgment reported in (1995 (2) SCC 539) NEW INDIA ASSURANCE CO. LTD. Versue SHANTI BAI 9SMT0 AND OTHERS wherein it is held:

"It was contended before the High Court that a separate premium has been paid for the passengers. This shows that there was a special contract to cover unlimited liability in respect of passengers between the appellant-Company and Respondent 4. The Tribunal as well as the High Court seem to have proceeded on the basis that the appellant-Company had charged an extra premium of 0.50 paise per passenger to cover the risk of unlimited liability towards pasengers. This seems to be an error. The premium of Rs.600/- has been paid in respect of 50 passengers. The policy clearly shows this. It is not 0.50 paise per passenger. It is pointed out by the appellant-Company with reference to its tariff in respect of "Legal Liability for Accidents to Passengers" that if the limit of liability for any one passenger is fifteen thousand rupees, the rate of annual premium per passenger is Rs 12/-. If the limit is twenty thousand rupees, the rate of annual premium per passenger is Rs 23/- per annum and so on. In respect of unlimited liability, the premium payable per passenger is Rs. 50/-."

In this case as could be seen from the insurance policy, only Rs. 30/- is paid and according to the tariff it covers the risk of only Rs. 30,000/-. Therefore, it is not an unlimitec liability to fasten the insurance company with the liability to pay the entire amount. Therefore, this appeal also will have to be partly allowed.

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6. In the result therefore, I proceed to pass the following:

ORDER

(A) Appeal No.MFA.2964/96 is allowed modifying the order of the learned Tribunal holding that the claimant is entitled for a total compensation of Rs. 55,000/- with interest as awarded by the Tribunal.

(B) Appeal No. MFA. 782/94 also is partly allowed fastening the liability on the insurance company at Rs. 30,000/- with interest and costs as payable to the claimant.

The balance amount shall be paid by the owner of the bus in question.

Sd/-
Judge

SAK/200398