

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT GULBARGA

*Dated this the 22<sup>nd</sup> day of April, 2013*

Present

***THE HON'BLE MR JUSTICE HULUVADI G RAMESH***

***&***

***THE HON'BLE DR JUSTICE JAWAD RAHIM***

***Miscellaneous First Appeal 30882 / 2012 (MV)***

Between:

1 E Nagamani W/o Krishna  
43 yrs

2 Raghavendra S/o Krishna  
25 yrs

Both are r/o Gorebal Camp  
Sindhnoor Tq  
Now at Manvi, Raichur District

Appellant

(By Sri Babu H Metagudda, Adv.)

***And:***

1 Rajabali S/o Alla Sab  
24 yrs, Driver  
Near Old Bus Stand, Maski  
Lingsugur, Raichur District

2 Mehaboob Pasha S/o KEB Babu Sab  
Owner of Car, Behind SFS Petrol Pump  
Maski, Lingsugur Tq, Raichur

3 Divisional Manager  
United India Insurance Co Ltd  
D O: Gandhi Chowk, Raichur

Respondents

(By Sri S S Aspalli, Adv. for R3)

The Appeal is filed under S.173(1) of the Motor Vehicles Act praying to modify the judgment and award dated 12.12.2011 in MVC 432/2011 by the Fast Track Court I, Raichur.

The Appeal coming on for Orders this day, **Huluvadi G Ramesh J.**, delivered the following:-

### ***JUDGMENT***

Claimants are in appeal aggrieved by the order of the Fast Track Judge, Raichur in MVC 432/2011 on 12.12.2011 on the question of liability as also on the quantum of compensation awarded.

On 2.11.2010, the deceased Krishna along with one Srinivas was proceeding on his motorcycle bearing No. KA 37 H 8066 slowly and cautiously on Sindhanur Maski Road. Near Mallayya Camp, a Tata Indica car belonging to the 1<sup>st</sup> respondent bearing No. 36 M 5063 driven in a negligent manner came and the driver of the said car suddenly applied brake without any signal or indication and since the car stopped suddenly, inevitably the motorcycle rider could not avoid the happening of the

accident and as a result, dashed to the car from behind due to which the rider Krishna as well as the pillion rider Srinivas fell down and sustained grievous injuries. The police have registered a case in Crime No.320/2010 and later after investigation, have filed a charge sheet against both the driver of the car and the rider of the motorcycle. The rider Krishna was treated at Government Hospital, Sindanur and thereafter, was shifted to some other hospital where he was inpatient for seventeen days and later, succumbed to the injuries on 19.11.2010 while still under treatment.

In the claim petition filed by the claimants who are the wife and son of the deceased, the Tribunal having arrived at a conclusion that there is negligence on the part of the deceased and the driver of the car in question in the ratio of 75:25, awarded compensation of Rs.2,38,000 (25% of Rs.9,52,000/-) with 6% interest. Aggrieved by the finding of the Tribunal on the point of negligence and also on the quantum of compensation, claimants are before this Court seeking enhancement and also apportionment on the point of negligence contending that the accident was only due to the negligence on the part of the driver of the car in question and the entire liability has to be shouldered on the driver of the car and

insurer of the car. It is stated, the finding of the Tribunal on the point of negligence on the part of the driver of the car is erroneous and without looking into the factual position as contained in the mahazar.

Heard the counsel representing the parties.

According to the counsel representing the insurer, the accident was due to the negligence of the rider of the motorcycle and the Tribunal has rightly passed the award.

On going through the records it is seen that as per the explanation offered in the spot mahazar – Ex.P2, the accident has taken place on Sindhanur Maski Road near Mallayya Camp. As is explained in the statement of one of the witnesses, the motorcycle went and dashed against the car and the rider of course, was Krishna, the deceased. It appears the stand taken by the claimants is that due to sudden applying of the brake by the driver of the car, the motorcycle dashed to the car from behind. Rather, the complaint was given against the injured. On filing of the complaint, ultimately, the police have filed charge sheet against both the driver of the

car in question as well as the injured/deceased. The statement of one Srinivas – pillion rider also speaks to the fact of the driver of the car, all of a sudden slowing down the vehicle without giving any signal/indication, as such, the motorcyclist Krishna rammed to the car. When such being the position as per record, and also looking into Ex.P2, the Tribunal taking into consideration the crime details/sketch which depict where the vehicles were found after the accident and the stretch of the road where the accident took place is a main road, has opined that the applying of brake all of a sudden without any signal or indication has resulted in the accident and in any event, if the driver of the car had not applied the brakes, there was no question of the motorcyclist dashing to the car from behind in a rash and negligent manner. It has also observed, before slowing down the vehicle, the driver ought to have given a signal/indication and so also the rider of the motorcycle could have avoided happening of the accident to some extent had he been careful. The finding given by the Tribunal without looking into the material produced in the charge sheet and statement of the witnesses speaks to the fact that there is non-consideration of the material on record which are produced along with the charge sheet. Even as per the charge sheet, accused / driver of the car all of a sudden had applied brake

without giving any signal. The motorcyclist / accused (deceased) had dashed against the car. So this indicates that major responsibility has to be saddled on the driver of the car as he had applied brake without giving any signal which resulted in the deceased ramming to the car from behind and the driver of the car has taken an exception stating that it was due to the negligence of the rider of the motorcycle.

Even assuming that the rider of the motorcycle had no driving license at the time of accident, ultimately the primary responsibility was on the driver of the car who ought to have given signal before stopping or slowing down the vehicle. The finding of the Tribunal has to be reversed to hold that there is negligence on the part of the driver of the car to the extent of 75% and on the rider of the motor car to the extent of 25% , might be, he would have rode the vehicle without there being driving license. While answering the issue on the point of negligence of the driver of the car and rider of the motorcycle, holding that the accident was due to the negligence of the driver of the car as also the rider of the motorcycle in the ratio of 75:25, we accordingly reverse the finding of the Tribunal on this aspect.

So far as assessment of compensation is concerned, since it has been assessed based on the salary certificate issued, no interference is called for. Thus, it is hereby ordered, claimants are entitled for compensation of Rs.9,52,000/- and after deducting 25% towards contributory negligence, it comes to Rs.7,14,000/- . The claimants are also entitled for another Rs.50,000/- towards conventional heads.

In the result, claimants are entitled for Rs.7,64,000/- with 6% interest from the date of petition till deposit. Insurer to deposit the amount in three months.

Appeal is allowed.

Sd/-  
**Judge**

Sd/-  
**Judge**

**An**