Shivaraj vs Rajendra on 5 September, 2018

Equivalent citations: AIR 2018 SUPREME COURT 4252, 2018 (4) AKR 579, (2018) 191 ALLINDCAS 84 (SC), (2018) 10 SCALE 683, 2018 (10) SCC 432, (2018) 131 ALL LR 482, (2018) 191 ALLINDCAS 84, (2018) 2 WLC(SC)CVL 559, (2018) 3 ACC 886, (2018) 3 CURCC 434, (2018) 4 ACJ 2755, (2018) 4 JCR 276 (SC), (2018) 4 TAC 1, (2018) 6 ANDHLD 89, (2018) 6 BOM CR 401, 2018 AAC 1863 (SC), (2019) 1 PUN LR 202, 2019 (1) SCC (CRI) 271, (2019) 3 MPLJ 123, (2019) 4 MAH LJ 16, AIR 2020 SC (CIV) 577, AIRONLINE 2018 SC 203

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Bench: Chief Justice, A.M. Khanwilkar, D.Y. Chandrachud

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8278-8279 OF 2018
(Arising out of SLP(C) Nos.1116-1117/2018)

Shivaraj .…Appellant(s)

:Versus:

Rajendra & Anr. ….Respondent(s)

JUDGMENT

A.M. Khanwilkar, J.

1. These appeals are directed against the common judgment and order passed by the High Court of Karnataka at Bengaluru dated 13th August, 2015 in M.F.A. No.7662 of 2013 (MV) and M.F.A. No.9995 of 2013 (MV) whereby the High Court allowed the appeal preferred by respondent No.2 (insurer) and dismissed the appeal for enhancement of compensation preferred by the appellant (injured claimant). Reason: a.m., the appellant was travelling in a tractor bearing Registration No.KA-15-T-2011 as a Coolie, on Bangalore Road, Survey No.266, Bangalore. The driver of the tractor was driving at a high speed, in a rash and negligent manner and dashed the tractor against a big mud stone, resulting in the tractor turning turtle and the appellant suffering grievous injuries. The appellant was immediately taken to North Side Hospital and Diagnostic Center, Bangalore,

where he underwent medical treatment as an inpatient, from 23rd February, 2010 to 27th February, 2010. Later on, he was shifted to Bowring and Lady Curzon Hospital, Bangalore, as an inpatient from 27th February, 2010 to 7th May, 2010 and underwent 4 (four) different surgeries. According to the appellant, despite receiving best medical treatment, he suffered permanent physical disability to an extent of 59.4% both lower limbs, 18.9% towards Vertebra, Clavicle and Scapula and 80% towards urethral injury, which is about 67% to the whole body. The appellant was only 25 years of age at the time of the accident and was working as a coolie. On account of his permanent disability, the appellant has become incapable of working as a coolie and is thus denied of his income to the extent of Rs.6,000/- per month.

3. Resultantly, a claim petition was filed by the appellant before the III Additional Senior Civil Judge, Member, MACT, Bangalore, bearing M.V.C. No.3533/2010, under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.15,00,000/- (Rupees Fifteen Lakh Only) for the injuries sustained by him in the accident.

4. The appellant examined 4 witnesses in support of his claim and also produced Exhs. P1 to P24. The respondent examined RW1 Sagayaraj, Administrative Officer and produced Exhs. R1 and R2. After analysing the evidence produced by the parties, the tribunal proceeded to answer the three issues framed by it on the basis of the pleadings.

5. The tribunal held that the claimant was able to prove the facts that the accident occurred on 23rd February, 2010 at 8:30 a.m. while he was going in the stated tractor, due to rash and negligent driving of the driver of the tractor. The tribunal held that the appellant was travelling as a loader in the tractor and not as a gratuitous passenger. After adverting to the Insurance Policy, the tribunal noticed that the same covered risk of 1+4. The tribunal held that the respondent No.2 admitted issuance of the Insurance Policy to the offending vehicle and its validity as on the date of the accident. The tribunal then proceeded to quantify the compensation amount on the notional income of the appellant at Rs.150/- per day as a coolie and, keeping in mind the age of the appellant at the relevant time i.e. 25 years, applied multiplier of 18. The tribunal adjudged the permanent disability of the appellant to the extent of 60% to the whole body and on that basis, computed the loss of future income of the appellant at Rs.5,83,000/-(Rupees Five Lakh Eighty Three Thousand Only). The tribunal arrived at the following calculation to be awarded as compensation to the appellant payable jointly by the owner of the vehicle and the insurer, along with interest at the rate of 8% per annum from the date of petition till the date of realization. The computation of compensation amount towards different heads arrived at by the tribunal is as follows:

Compensation Heads	Compensation amount
1. Pain and agony	Rs. 85,000/-
2. Medical expenses	Rs.1,42,324/-
3. Future medical expenses	Rs. 50,000/-

4. Loss of income during laid up period Rs. 12,000/-

5. Rest, Nourishment and attendant Rs. 5,000/- charges

6. Loss of future income Rs.5,83,000/-

7. Conveyance Rs. 5,000/-

8. Loss of amenities & discomfort in life Rs. 20,000/-

Total Rs.9,02,324/-

6. Feeling aggrieved by the said award, respondent No.2 (insurer) preferred an appeal being M.F.A. No.7662 of 2013 (MV) and the appellant preferred a separate appeal being M.F.A. No.9995 of 2013 (MV) for enhancement of the compensation amount. The High Court disposed of both these appeals by the impugned common judgment and order. The High Court broadly agreed with all other findings given by the tribunal but held that going by the stand taken by the appellant throughout the proceeding and the contemporaneous documents Exhs. P2 to P5, nowhere was it mentioned that the appellant was travelling in a trailer attached to the tractor. The evidence, however, is unambiguous that the appellant travelled in the tractor which was insured only for agriculture purposes and not for carrying goods. No additional insurance was taken in respect of the trailer rather presence of trailer is not shown or demonstrated in any of the documents and there was no evidence to demonstrate that the tractor was attached to a trailer. The tractor could accommodate only one person namely the driver of the tractor and none else.

7. On that finding, the High Court concluded that the appellant travelled in the tractor in breach of policy terms and conditions and therefore, the Insurance Company cannot be made liable to compensate the owner or the claimant. Accordingly, the appeal preferred by the respondent No.2 was allowed by the High Court and the insurer came to be absolved from the liability to pay compensation. While dealing with the appeal for enhancement of the compensation amount filed by the appellant, the High Court noted that the amount arrived at by the tribunal was just and proper and reckoned all the mandatory heads of compensation. As a result, it concluded that the appellant was not entitled for enhanced compensation.

8. The appellant has assailed the said common judgment and order of the High Court by these appeals. We have heard Ms. Kanika for the appellant and Ms. Rekha Chandra Sekhar for the respondent No.2 (insurer). Both the courts have accepted the case of the appellant that the motor accident occurred on 23rd February, 2010 at about 8:30 a.m. in which the appellant suffered grievous injuries due to the rash and negligent driving of the driver of tractor. Further, both courts have determined permanent disability of 60% to the whole body suffered by the appellant in the accident.

9. The High Court, however, found in favour of respondent No.2 (insurer) that the appellant travelled in the tractor as a passenger which was in breach of the policy condition, for the tractor was insured for agriculture purposes and not for carrying goods. The evidence on record unambiguously pointed out that neither was any trailer insured nor was any trailer attached to the tractor. Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the Insurance

Company (respondent No.2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case.

10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd. Vs. Swarna Singh & Ors.1, Mangla Ram Vs. Oriental Insurance Co. Ltd.2, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors.3 and including Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others.4 In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the 1 (2004) 3 SCC 297 2 (2018) 5 SCC 656 3 2018 (9) SCALE 310 4 (2017) 4 SCC 796 appellant with liberty to recover the same from the tractor owner (respondent No.1).

11. Reverting to the issue regarding the determination of compensation amount by the tribunal and as affirmed by the High Court, we find that the tribunal had taken into account all the relevant aspects and provided for just and proper compensation amount for different heads as are permissible. The High Court, therefore, was justified in not disturbing the said conclusion of the tribunal. We affirm the view so taken by the High Court. Accordingly, the appeal preferred by the appellant for enhancement of compensation amount does not warrant interference.

12. We may place on record that the appellant did make an unsuccessful attempt to persuade us to take a view that the permanent disability should be reckoned as 67% to the whole body. However, after going through the evidence of the doctor who had treated the appellant and the medical records, we find that the assessment made by the tribunal about the extent of permanent disability at 60% to the whole body seems to be a possible view. We are not inclined to disturb the said finding and also because it has been justly affirmed by the High Court, being concurrent finding of fact. Accordingly, the claim of the appellant for enhancement of compensation amount does not merit interference.

13. In view of the above, the appeals are partly allowed to the extent of directing the respondent No.2 (Oriental Insurance Company Ltd.) to pay the compensation amount determined by the tribunal and affirmed by the High Court to the appellant in the first place and with liberty to recover the same from the owner of the offending tractor (respondent No.1) in accordance with law.

14. The appeals are disposed of in the aforementioned terms with no order as to costs.

.....CJI.

(Dipak Misra) .....J. (A.M. Khanwilkar) New Delhi;

September 05, 2018.