Halappa vs Malik Sab on 15 December, 2017

Equivalent citations: AIRONLINE 2018 SC 514, AIRONLINE 2017 SC 365

Author: D Y Chandrachud

Bench: D Y Chandrachud, A.M. Khanwilkar, Dipak Misra

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS 022911-022912 OF 2017
(Arising out of SLP (C) Nos 6891-6892 of 2017)

HALAPPA ..... APPELLAN

Versus

MALIK SAB ..... RESPONDE

JUDGMENT

Dr D Y CHANDRACHUD, J 1 The High Court of Karnataka by a judgment dated 12 July 2011 reversed a decision of the Motor Accident Claims Tribunal awarding compensation to the appellant in the amount of Rs.8,66,000/- with interest @ 7% per annum. While reversing the award of compensation, the High Court has come to the conclusion that the appellant was sitting on the mudguard of a tractor and this was not a risk insured by the insurer. Upon this finding, the High Court allowed the appeal of the insurer and rejected the appeal filed by the appellant for enhancement of compensation.

2 The accident took place on 24 September 2005. The appellant was 28 years old at the time of the accident. The case of the appellant is that on 24 September 2005 he was visiting Sirigere to attend an event. A demonstration of tractors was being held at 11.30 A.M. by Sonalika tractors. The appellant, who is an agriculturist, claimed that when he approached the tractor, the driver was

unable to bring it to a halt as a result of which it turned turtle and collided with the appellant resulting in his sustaining grievous injuries. A first information report was registered at the Bharamasagara Police Station under Case Crime 147 of 2005 and a charge-sheet was filed against the driver for offences punishable under Sections 279 and 338 of the Penal Code.

3 The appellant claimed compensation in the amount of Rs.25,00,000/-. The appellant was examined as PW 1 in support of his claim. PW 2 Dr Jayaprakash was examined to prove the nature of the injuries sustained by the appellant. The evidence indicated that immediately after the accident the appellant was taken for treatment to the community health centre, Sirigere where he was administered first aid. He was thereafter shifted to Bapuji Hospital, Davangere from where he was referred to the M S Ramayya Hospital, Bangalore for further treatment. The medical records showed that the appellant had suffered paraplegia with a compression fracture. The appellant has been permanently immobilized, is wheel-chair bound, and requires artificial support for bladder and bowel evacuation. The lower portion of his body has been paralyzed. Dr Jayaprakash, PW 2, deposed in evidence that the disability of the appellant is one hundred per cent since both his lower limbs have been paralyzed resulting in a loss of bladder and bowel control.

4 Before the Tribunal the defence of the insurer was that the appellant was riding on the mudguard of the tractor, this having been stated in the FIR. According to the insurer, the policy of insurance did not cover the risk of anyone other than the driver of the tractor. The Tribunal rejected the defence of the insurer and relied upon the testimony of the appellant which was found to have been corroborated by the evidence of PW 3, an eye-witness to the incident. On the aspect of compensation the Tribunal noted that the appellant belongs to a family of agriculturists which has a land holding of 5 acres and 25 gunthas. The appellant was married. The Tribunal did not accept the plea of the appellant that his monthly income was Rs.10,000/-, in the absence of cogent proof. The Tribunal assumed the income of the appellant to be Rs.3,000/- per month. The age of the appellant at the time of the accident being 28 years, the Tribunal applied a multiplier of 16 and computed the compensation on account of the loss of future earning capacity at Rs.5,76,000/-. An additional amount of Rs.50,000/- was awarded towards loss of amenities and Rs.30,000/- for future medical expenses. An amount of Rs.2,10,000/- was awarded towards medical expenses, pain and suffering. Consequently, a total compensation of Rs.8,66,000/- was awarded together with interest at 7% per annum from the date of the claim petition until realization. The driver, owner and insurer have been held to be jointly and severally liable.

5 The appellant filed an appeal for enhancement of compensation. The insurer had also filed an appeal questioning its liability. The High Court has allowed the appeal of the insurer and dismissed the appeal filed by the appellant. The High Court held that in the first information report which was registered on the date of the accident on the basis of the statement of the appellant, it was stated that the appellant was sitting on the mud-guard next to the driver of the tractor. Subsequently on 30 September 2005 another statement was recorded by the police in which the appellant stated that the accident had taken place as a result of the rash and negligent act of the tractor driver, due to which the tractor had turned turtle and fallen over the appellant. In the view of the High Court, the police had attempted to protect the liability of the owner and had recorded a further statement to support the plea that the appellant was a third party and that the tractor had fallen upon him. The High

Court has also doubted as to how the police could have recorded the statement of the appellant on 30 September 2005 when he was shifted to M S Ramayya Hospital in Bangalore.

6 Learned counsel appearing on behalf of the appellant submits that the High Court has manifestly erred in reversing the considered judgment of the Tribunal. The appellant urged that the finding of fact recorded by the Tribunal on the basis of substantive evidence could not have been reversed purely on the basis of the FIR. Moreover, it was urged that the insurer had not produced any ocular evidence to displace what was stated by the appellant in the course of his deposition and which was supported by PW 3 who had witnesses the accident. 7 On the other hand, the learned counsel appearing on behalf of the insurer has supported the judgment of the High Court and urged that the finding that the appellant was injured while riding on the mud-guard of the tractor is correct. Consequently it was urged that the insurance policy which was issued to the owner did not cover the risk arising from a third party riding on the tractor and there was hence a breach of the insurance policy.

8 The judgment of the Tribunal indicates that the defence of the insurer based on the first information report, the complaint Exh.P1 and the supplementary statement of the appellant at Exh.P2 was duly evaluated. The Tribunal, however, observed thus:

> "...the respondent no.3 and RW.1 submitted that the petitioner has invited the alleged unfortunate accident but except the FIR and complaint Ex.P.1 the respondent no.3 has not produced any documents to show that at the time of accident the petitioner was travelling as a passenger by sitting on the engine of the tractor in question. During the course of cross-examination RW.1 has admitted that the respondent no.3 has maintained a separate file in respect of accident in question and he has also admitted that the respondent no.3 has not produced the investigator's report of this case. Admittedly the respondent no.3 has not examined any independent eye witness to the accident to prove that on the relevant date and time of the accident the petitioner was travelling as a passenger by sitting on the engine of the tractor. If really the petitioner has sustained grievous injuries by falling down from the engine of said tractor the respondent no.3 insurer could have produced the separate file maintained by it in respect of the accident in question and it could have also produced investigator's report in respect of the said accident but admittedly the respondent no.3 has not produced the said separate file and investigator's report in respect of the accident in question for the reasons best known to it. On the other hand as already stated above it is clear from the statement of petitioner on oath and eye witness and from the supplementary statement of petitioner at Ex.P.2 and police statement of witnesses at Ex.P.3 and Charge Sheet at Ex.P.6 it is clear that due to rash and negligent driving of said tractor by respondent no.1 the said tractor turtle down and fell over the petitioner who was about to board the tractor and as a result of which the petitioner has sustained grievous injuries. Moreover as already stated above the Investigating Officer concern after detail investigation has filed the Charge Sheet against the respondent no.1 for the offences punishable u/s.279 and 338 IPC..."
> The High Court has proceeded to reverse the finding of the Tribunal purely on the

basis that the FIR which was lodged on the complaint of the appellant contained a version which was at variance with the evidence which emerged before the Tribunal. The Tribunal had noted the admission of RW1 in the course of his cross-examination that the insurer had maintained a separate file in respect of the accident. The insurer did not produce either the file or the report of the investigator in the case. Moreover, no independent witness was produced by the insurer to displace the version of the incident as deposed to by the appellant and by PW 3. The cogent analysis of the evidence by the Tribunal has been displaced by the High Court without considering material aspects of the evidence on the record. The High Court was not justified in holding that the Tribunal had arrived at a finding of fact without applying its mind to the documents produced by the claimant or that it had casually entered a finding of fact. On the contrary, we find that the reversal of the finding by the High Court was without considering the material aspects of the evidence which justifiably weighed with the Tribunal.

We are, therefore, of the view that the finding of the High Court is manifestly erroneous and that the finding of fact by the Tribunal was correct.

9 That leaves the Court to determine the quantum of compensation. The medical evidence on the record shows that the lower limbs of the appellant have been paralyzed resulting in a loss of bladder and bowel control. The medical evidence establishes that the disability of the appellant is one hundred per cent. The medical records have been scrutinized by the Tribunal. The appellant suffers from traumatic paraplegia and was hospitalized for 42 days. The appellant was 28 years of age when the accident took place on 24 September 2005. In our view, the monthly income of the appellant, having regard to the facts and circumstances of the case should be taken at Rs.4,000/-. After allowing for future prospects and making a deduction for present expenses, the compensation payable to the appellant shall stand enhanced by an amount of Rs.1,50,000/- from Rs.5,75,000/- to Rs.7,75,000/-. The amount for future medical expenses which has been fixed at Rs.30,000/- should be enhanced to Rs.1,20,000/- having regard to the serious nature of the disability. In other words, the compensation of Rs.8,66,000/- awarded by the Tribunal shall be enhanced by an additional amount of Rs.2,70,000/-. The appellant shall be entitled to interest @7% p.a. from the date of the claim petition until realization. The insurer shall deposit the compensation or, as the case may be, the balance payable in terms of this judgment within a period of 12 weeks from today before the Tribunal which shall be released to the appellant upon due verification. 10 The appeals are allowed in the above terms with no order as to costs.

.....CJI [DIPAK MISRA] .....J [A.M. KHANWILKAR]
.....J [Dr D Y CHANDRACHUD] New Delhi December 15, 2017