SUPREME COURT OF INDIA

Renukadevi H. Etc.

Vs.

Bangalore Metropolitan

(T Chatterjee and H S Bedi JJ.)

14.02.2008

ORDER

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 3^rd of July, 2006 of the High Court of Karnataka at Bangalore in M.F.A. No. 1603 of 2003 c.w. M.F.A.CROB No. 25/2004.

3. We have heard the learned Counsel for the parties and examined the impugned judgment and other materials on record. On consideration of the material on record and the submissions made by the learned Counsel for the parties, we are of the view that no interference is needed in the present appeal and, therefore, the same shall be dismissed for the reasons stated hereinafter.

4. On 11^th September, 2000, the appellant was riding a TVS Scooty on Jayanagar, 4^th Main Road, 30^th Cross, North towards South. By that time one BMTC Pushpak Bus bearing NO.KA-01-F-593 came from the same direction from behind in a very high speed, in rash and negligent manner endangering the human life tried to turn towards left side and hit the scooty. The scooty trapped under the bus wheel and was fully damaged. The appellant lost her consciousness and sustained severe injuries over the head, right leg, pelvis bone and other parts of the body. Finally she was operated for her head injuries and also treated for number of fractures. She was discharged on 14^th December, 2000 from the hospital with follow up treatment. For the injury and for medical bills, a compensation application was filed before the VI Additional Civil Judge, MACT-2, Court of Small Causes, Bangalore City in which the claim of the appellant for compensation was allowed. An award was passed by the tribunal to an extent of Rs. 12,32,000/-. This award was challenged in the aforesaid appeal in the High Court on the ground that the tribunal erred in fixing the entire fault on the driver of the BMTC bus for the accident and secondly, the quantum of compensation was also

on the higher side. The Cross Objection filed by the claimant was for increase in the quantum of compensation. It is true that the tribunal came to a conclusion of fact that due to total negligence of the driver of the BMTC bus, the accident took place and, therefore, on the calculation made by the tribunal, a sum of Rs. 12,32,000/- was awarded. However, in appeal, the High Court by the impugned order came to a conclusion of fact that the tribunal had lost sight of the fact that the spot mahazar clearly indicated that the scooty driven by the appellant hit the rear wheel of the bus, indicating that the claimant was also negligent to a great extent.

5. Looking to the finding of the tribunal, we also find that the tribunal also came to the conclusion of fact that the respondent was also negligent and his responsibility was more, that is, when a Scooty was going on the left side of the road, the driver of a heavy vehicle ought to have utilized the road or when taking a turn towards east he ought to have observed the light vehicles that were going on the left side and then take a turn and not suddenly come and taken a turn. This finding of the tribunal would indicate that the responsibility of the accident was more on the respondent and, therefore, it cannot be said that the appellant was also not negligent. From the aforesaid findings of the tribunal as well as of the High Court which was on consideration of fact, it would be clear that some contributory negligence should also be attributed to the appellant. Considering the entire material on record, the High Court reversed the findings of the tribunal and also came to a conclusion of fact that compensation to the extent of 50 per cent on the ground that the appellant was also responsible for the contributory negligence should be on the petitioner. This finding of fact arrived at by the High Court reversing the finding of the tribunal, could not be said to be perverse or arbitrary in nature. In this view of the matter, we are not inclined to interfere with the order of the High Court reducing the compensation to the extent of 50 per cent.

6. Mrs. Kiran Suri, learned Counsel appearing on behalf of the appellant, however, had drawn our attention to the decision of this Court (Pramod Kumar Rasikbhai Jhaveri v.Karmasey Kunvargi Tak and Ors.) and in (Municipal Corporation of Greater Bombay v. Laxman Iyer and Anr.). In our view, the principle laid down in these two decisions cannot be applied in the facts and circumstances of the present case. In the present case, admittedly, the High Court had in fact come to the conclusion that the appellant had also contributed to the negligence and therefore, the compensation was reduced to 50 per cent.

That being the position, we are not inclined to interfere with the impugned order of the High Court. The appeal is accordingly dismissed with no order as to costs.