(2014) 08 KAR CK 0062

In the Karnataka High Court

Case No : M.F.A. No. 32052/2010 (MV) and M.F.A. CROB No. 1057/2012

Ananthamma APPELLANT

Vs

P. Harikishan Reddy
 The Branch Manager National Insurance Co.,Ltd. Vs Rangappa RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 163-A, 166

Citation : (2014) 08 KAR CK 0062

Hon'ble Judges : Ravi V. Malimath, J

Bench : Single Bench

Advocate : Preeti Patil and Basavaraj R. Math, Advocate for the Appellant; Basavaraj R. Math and Preeti Patil, Advocate for the Respondent

Judgement

Ravi V. Malimath, J.—It is the case of the claimants that the deceased and others had boarded a cruiser jeep bearing No. KA-37/M-1614 on 1.9.2008 at about 2.15 p.m. When they were travelling from Gunj circle to Chicksugur, the driver of another jeep bearing No. AP-29/U-9922 came and dashed against the vehicle. One Shivappa died and the rest sustained injuries. The LRs. of Shivappa filed MVC No. 626/2008. The injured filed MVC Nos. 698, 699, 700, 701, 702, 703 and 704 of 2008 seeking compensation. All the claim petitions were clubbed together and a common order was passed. The LRs of the deceased pertaining to MVC No. 626/2008 was awarded compensation of Rs. 1.70 lakh along with interest. Questioning the liability hoisted on it to satisfy the award, the insured has filed MFA No. 32052/2010 and the claimants have filed Cross objections No. 1057/2012.

2. The primary contention of the insurer is that the claimants are the brothers and two sisters of the deceased. That there is no dependency on the deceased in any manner whatsoever. That the cause title in the claim petition would show that the brother is aged 45 years. The 2nd claimant sister was 35 years and married and the 3rd claimant was aged 30 years and married. The sisters having

married cannot be considered as dependents. That the brother being a major is not entitled to any compensation. She contends that they are not the legal heirs of the deceased and prays for dismissal of the claim petition.

3. On the other hand learned counsel for the claimants defends the impugned order and relies on the judgment reported in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, to contend that the claim petition filed by the brother of the deceased, is maintainable. Applying the same principles the contention of the insurer requires to be rejected.

4. On hearing learned counsels'', I'' am of the considered view that there is no merit in this contention. I have considered the records of the case. The specific case of the claimants is that they were living together along with the deceased. The deceased was contributing his income to maintain the family. Nowhere is it stated that they were independently living and had their own source of income. On the other hand in the written statement filed by the insurer, no contention is taken that the claimants are not entitled for any compensation on the ground that they are majors and they have their own source of income. The only contention taken was that they are not the legal representatives of the deceased. So far as the question of legal heirs is concerned, 1st claimant is the brother, 2nd and 3rd claimants are the sisters. In view of the absence of the contention of the insurer that the claimants were employed and secondly were not dependent, I'' am of the considered view that such an argument cannot be accepted. Even in the cross examination, except a feeble suggestion that the claimants were not dependent on the income of the deceased, there is no specific ground on the same. On the other hand the evidence of the claimants would clearly show that they are all living together and are depending upon the income of the deceased. There is nothing to disbelieve the claim set out in the evidence. Nothing worthwhile has been elicited to disbelieve the claim of the claimants. Therefore, the contention that the claimants are not entitled for any relief are ill founded. Moreover the Hon''ble Supreme Court in the aforesaid judgment specifically held that a major brother could be considered as a Legal representative and was dependent. The Hon''ble Supreme court held the same comes within the purview of the definition of legal representative and therefore, are entitled to compensation. Reliance is placed by the insurer on the judgment of the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . I have considered paragraph No. 15. That too would not come to the aid of the insurer. Therein the Hon''ble Supreme Court held that brothers, sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father. In the instant case as held herein there is absence of a contention to the said fact in the written statement. Therefore, the said paragraph in the judgment will not come to the aid of the insurer. Following the aforesaid judgment in the case of Ramanbhai I'' am of the considered view that the claimants are entitled to maintain the petition seeking for compensation. Consequently, the appeal by the insurer requires to be rejected.

5. So far as enhancement is concerned, the deceased was said to be a hamal and earning Rs. 200 to Rs. 250/- per day. The Tribunal at para 20 of the judgment held that since the deceased had no specific job, the notional income was taken in terms of II Schedule u/s 163-A of the Motor vehicles Act at Rs. 15,000/- per annum and deducting 1/3rd, applying multiplier of 14, awarded a compensation of Rs. 1,40,000/- towards loss of dependency and Rs. 30,000/- on other heads. The reasonings assigned by the Tribunal is unacceptable. Applying section 163-A to a petition u/s 166 does not arise. The deceased was said to be a hamal. Following the Judgment of the Supreme Court in the case of Sri Ramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Limited, , it is appropriate to hold his income at Rs. 5,000/- per month. In the claim petition it is stated that the deceased was married but was not living with his wife from a very long time. Under these circumstances he will in law be considered as a bachelor. Consequently 50% of the same requires to be taken towards personal expenses. He was aged 40 years. The appropriate multiplier would be 15. Consequently, the loss of dependency would be as follows;

Rs. 5,000/- less 50%x 12 x 15 = Rs. 4,50,000/-

A sum of Rs. 25,000/- is awarded towards funeral expenses. A sum of Rs. 15,000/- is awarded towards litigation expenses.

The compensation now awarded is as follows:-

Consequently, the compensation is enhanced by a sum of Rs. 2,80,000/- (Rs. 4,75,000/- less Rs. 1,70,000/-) along with interest at 9% p.a. from the date of the petition till the date of realisation and to be satisfied by the insurer within a period of 8 weeks from the date of receipt of copy of this order.

The amount in deposit be transmitted to the Tribunal for necessary orders.

Ordered accordingly.

