(2015) 11 KAR CK 0264

In the Karnataka High Court

Case No : M.F.A. Nos. 4117 and 1623/2009

Anasuyamma and Others APPELLANT

Vs

N.C. Venkataravana and Others RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Citation : (2015) 11 KAR CK 0264

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : K. Hanumantharayappa, Advocate, for the Appellant; Anand Reddy, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—These two appeals arise out of the judgment and award dated 28.10.2008 passed in M.V.C. No. 370/2001 by the Motor Accidents Claims Tribunal, Madhugiri.

2. M.F.A. No. 4117/2009 is filed by the dependents of the deceased seeking enhancement of compensation, whereas M.F.A. No. 1623/2009 is filed by the Insurance Company challenging the liability fastened on it. As common questions arise for consideration, both these appeals are clubbed, heard together and are disposed of by this common judgment.

3. On 04.02.2001, Ashwathanarayana was traveling as a pillion rider on Bajaj Caliber Motor Cycle bearing Registration No. KA-16-J-326 towards Pavagada. Indeed, he was a pillion rider along with another pillion rider by name Mahalingaiah. The rider of the motor cycle dashed against a cyclist who was coming from opposite direction. As a result, the pillion riders fell down. Ashwathanarayana sustained serious head injuries. He was shifted to St. John''s Medical College Hospital, Bengaluru, where he succumbed to the injuries on 12.02.2001.

4. The claimants being his widow, two minor children and parents filed claim

petition contending inter alia that deceased was earning Rs. 10,000/- per month out of the business carried on by him and the claimants were totally depending on his earnings for their survival.

5. The claim was contested by the respondents. It was contended by the Insurance Company that as the deceased was carried on the motor cycle as a pillion rider along with another pillion rider, the Insurance Company was not liable to make good the compensation.

6. Before the Tribunal, claimant examined herself as PW-1 and another witness - K. Hanumantharaya as PW-2. Exs. P-1 to P-3 were produced and marked. No evidence was adduced on behalf of the respondents - owner and the insurer.

7. The Tribunal on consideration of the evidence on record, has held that accident occurred on account of the actionable negligence of the rider of the motor cycle and as a result of the accident, Ashwathanarayana who was proceeding on the motor cycle fell down and sustained fatal injuries. The Tribunal has also found that as the motor cycle was duly insured at the time of accident and the rider of the motor cycle had valid driving license, the Insurance Company was liable to make good the compensation jointly and severally along with the owner and driver of the motor cycle.

8. Learned Counsel for the appellants-claimants in M.F.A. No. 4117/2009 contend that although sufficient evidence was adduced before the Tribunal including in the form of evidence of PW-2 to show that deceased was earning a sum of Rs. 10,000/- per month and was supporting the entire family consisting of his minor children and parents, the Tribunal has wrongly recorded a finding holding that deceased was earning only a sum of Rs. 3,000/- per month. By deducting 1/3rd out of the income towards his personal expenses, the remaining amount of Rs. 2,000/- has been taken and applying multiplier 16, loss of dependency in a sum of Rs. 3,84,000/- has been worked out. Adding a sum of Rs. 10,000/- towards loss of consortium, Rs. 10,000/- towards loss of love and affection and Rs. 20,000/- towards transportation of dead body, funeral and other expenses, a total sum of Rs. 4,24,000/- has been awarded, which according to the appellants-claimants is highly unrealistic and has resulted in the claimants being under compensated.

9. Learned Counsel for the Insurance Company apart from supporting the findings recorded regarding quantum of compensation awarded, submits that the Tribunal was in error in fastening the liability on the Insurance Company including the fact that the pillion rider deceased had himself contributed to the negligence by risking his safety to proceed on the motor cycle along with another pillion rider. He submits that there is a bar for the rider of the motor cycle to carry more than one person as a pillion rider, and therefore, the deceased having contributed to the negligence, the claimant was not entitled for compensation.

10. Having heard the learned Counsel for both parties, the points that arise for consideration in these appeals are,

(1) whether the claimants are entitled for enhancement of compensation? If yes, at what rate?

(2) whether the pillion rider deceased Ashwathanarayana had contributed to the accident and if so, to what extent?

(3) what is the extent of liability of the insurance company in the facts and circumstances of the case?

11. The evidence on record shows that deceased Ashwathnarayana was aged about 32 years at the time of accident. It is stated by the claimants that he was doing business by running a medical shop and was the only earning member in the family. Evidence of PW-2 supports the assertions made by PW-1 - widow of the deceased in this regard. Although claimants have stated that deceased was earning Rs. 10,000/- per month from the business, in the absence of any documentary evidence produced, the said amount cannot be taken into consideration as the self-serving testimony of the claimants cannot be believed. It cannot also be lost sight that deceased being an young man of 32 years carrying on business in a place like Madhugiri, could not have earned only a sum of Rs. 3,000/- per month.

12. Having regard to the evidence on record and the facts and circumstances of the case, I am of the view that monthly income of the deceased is required to be taken at Rs. 4,000/- per month, instead of Rs. 3,000/-. Having regard to the proof of the family members dependent on the deceased i.e., the widow, two minor children and parents, the Tribunal ought to have deducted 1/4th towards personal expenses and not 1/3rd. If loss of dependency is calculated by applying the relevant multiplier 16, compensation payable will work out to Rs. 5,76,000/- (Rs. 3,000/- x 12 x 16).

13. As against the conventional heads, the Tribunal has not awarded just and reasonable amount. Towards loss of consortium a sum of Rs. 50,000/-; towards love and affection for both the children another sum of Rs. 50,000/- and towards transportation of dead body, funeral and other expenses, a sum of Rs. 24,000/- deserves to be allowed. Accordingly, total amount of compensation payable would come to Rs. 7,00,000/-. Thus, the claimants are entitled for a total compensation of Rs. 7,00,000/-.

14. In so far as allegation of contributory negligence on the part of the pillion rider - deceased Ashwathnarayana is concerned, learned Counsel for the appellant-Insurance Company is right and justified in contending that deceased has volunteered to take the risk by proceeding in the motor cycle as pillion rider along with another pillion rider. It has to be borne in mind that risk of accident would certainly increase if the rider of the motor cycle allows two pillion riders to proceed on the motor cycle. The facts and circumstances of the case disclose that the rider of Motor Cycle has dashed against the cyclist due to his negligence and also on account of the fact that he was not in a position to regulate the motor cycle and efficiently control it. Hence, it has to be inferred in the facts and

circumstances of the case that there was contribution by the pillion rider to the accident and the resultant injuries sustained by him.

15. The point then is what is the extent of negligence on the part of the pillion rider. Material on record shows that deceased Ashwathnarayana was the first pillion rider and the complainant who lodged the complaint and who also suffered injuries was the second pillion rider who was picked up by the rider of the motor cycle subsequently. Therefore, the contribution by the deceased has to be assessed at 40%. If the amount of compensation payable is worked out by taking into consideration the contributory negligence of the pillion rider, the claimants would be entitled for 60% of the compensation payable to them, which works out to Rs. 4,20,000/-. As the amount awarded by the Tribunal is Rs. 4,24,000/-, I do not find it necessary to interfere with the award passed.

16. Accordingly, both the appeals are accordingly allowed by modifying the judgment and award. The amount of compensation determined by the Tribunal is left undisturbed. The amount in deposit is ordered to be transferred to the Tribunal for disbursal in accordance with law and in terms of the direction issued by the Tribunal. The balance amount payable shall be paid within six weeks from today.

