(2014) 11 KAR CK 0293

In the Karnataka High Court

Case No : MFA Nos. 7107 and 7359 of 2012 (MV)

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

M.R. Mamatha
 M.R. Mamatha Vs Yogish RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 11 KAR CK 0293

Hon'ble Judges : Ravi V. Malimath, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : O. Mahesh and Krishnoji Raos, for B. Pramod, Advocate for the Appellant; Krishnoji Rao, Advocate for B. Pramod and O. Mahesh, Advocate for the Respondent

Judgement

Ravi V. Malimath, J.—The case of the Claimants is that on 10.02.2010 at about 1.30 pm, while the deceased K.H. Prasanna was going on the left side of the road as a pedestrian near Taluk Office, Hosadurga, at that time, a goods auto bearing registration No. KA-16/B-537 came in a rash and negligent manner and dashed against him. He fell down and sustained injuries to his head, abdomen, hand shoulder and other parts of the body. He was shifted to the Government Hospital, Hosdurga for treatment and then referred to SS Hospital, Davanagere. Thereafter, he died. The wife and two children filed a claim petition under Section 166 of MV Act. The Tribunal awarded a sum of Rs. 15,34,044/- along with interest. Seeking enhancement, claimants have filed MFA No. 7107/2012 and questioning the liability the insurer has filed MFA No. 7359/2012.

2. The Tribunal while considering the plea of the insurer held that driver of the vehicle did not possess a proper licence to drive the class of vehicle. The driver was authorized to drive only a non-transport vehicle and the vehicle in question is a transport vehicle. Hence, the Tribunal was of the view that the insurer is not liable to indemnify the insured. However, the insurer was directed to pay the compensation to the Claimants and thereafter to recover the same from the

insured.

3. The learned counsel for insurer contends that the Tribunal has committed an error in directing it to pay and recover when the endorsement is absent in the licence and since the licence is issued to drive particular class of vehicle only. Therefore, insurer is not liable to pay the compensation. However, the Hon''ble Supreme Court in the case of S. Iyyapan Vs. United India Insurance Company Ltd. and Another, has held that whenever a licence is bereft of an endorsement of a transport or non-transport vehicle, in that event, the insurer would not be liable to satisfy the award. However, Supreme Court held that the insurer should first satisfy the award and then to recover the same from the insured in terms of the directions.

4. In view of the aforesaid judgment of the Supreme Court the Tribunal is right in law in holding that insurer has to first satisfy the award and thereafter recover the same from the insured. Hence, the contention of the learned counsel for the insurer is rejected.

5. So far as enhancement is concerned the deceased was said to be working as Typist in the Government Department. He was aged 54 years as on the date of accident. The Tribunal has taken notional income of the deceased at Rs. 10,943/-, added Rs. 2,000/- as future prospects and rounded it off to Rs. 13,000/- per month. Thereafter, it deducted 1/3rd towards personal expenses. Since the age of the deceased'' was 54 years at the time of accident the proper multiplier applicable was 11. Thus, the loss of dependency was granted at Rs. 11,44,044/-. The compensation awarded under this head appears to be marginally higher. The Tribunal ought to have taken into consideration the fact that the deceased was having only six more years of service. Hence, grant of future prospects may not correct. However, so far as the amounts awarded on other heads are concerned, i.e., loss of amenities, loss of consortium and medical and funeral expenses, are on the lower side. The future prospects is considered at Rs. 2,000/- per month. The compensation on the conventional heads is inadequate. However, in our considered view, since there is a marginal increase in the compensation awarded by the Tribunal for loss of dependency on the one hand and on the other, it awarded a lesser compensation on conventional heads, we are of the view that the over all compensation awarded by the Tribunal stands balanced. Thus, we are not inclined to interfere with the judgment and award passed by the Tribunal.

6. Accordingly, the appeal filed by the Claimant in MFA No. 7107/2012 as also the appeal filed by the Insure in MFA No. 7359/12, are dismissed.

The amount in deposit in MFA No. 7359/2012 is directed to be transmitted to the Tribunal.

