

(2014) 04 KAR CK 0230

In the Karnataka High Court

Case No : M.F.A. Nos. 7705 and 10041 of 2011 (MV)

Bangalore Metropolitan Transport Corporation

APPELLANT

Vs

V.M. Sasidaran
 V.M. Sasidharan Vs The Managing
Director, BMTC

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 04 KAR CK 0230

Hon'ble Judges : P.D. Waingankar, J;N.K. Patil, J

Bench : Division Bench

Advocate : K.G. Prathapkumar, Advocate in M.F.A. No. 7705 of 2011 (MV) and Sri D. Vijaya Kumar, Advocate in M.F.A. No. 10041 of 2011 (MV), Advocate for the Appellant; D. Vijaya Kumar, Advocate for R1 in M.F.A. No. 7705 of 2011 (MV), Sri E.I. Sanmathi, Advocate for R2 in M.F.A. No. 7705 of 2011 (MV) and Advocate for R4 in M.F.A. No. 10041 of 2011 (MV), Advocate for the Respondent

Judgement

N.K. Patil, J.—These two appeals by the claimants and by the Corporation are directed against the same judgment and award dated 17/05/2011 passed in MVC No. 7135/2009, by the VII Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal-3, Bangalore (SCCH-3), (hereinafter referred to as "Tribunal" for short), on the ground that, the compensation of Rs. 2,84,000/- awarded by the Tribunal under different heads as against the claim of the claimants for a sum of Rs. 25,00,000 on account of the death of the deceased Smt. Sandhya.S, in the road traffic accident is on lower side and liable to be enhanced as contended by the claimants and the direction issued by the Tribunal to the Corporation to indemnify the award amount without issuing direction to the Insurer is liable to be modified as contended by the Insurer.

2. In brief, the facts of the case are:

The claimants are the parents and brother of the deceased. On account of the death of the deceased in the road traffic accident, they filed a claim petition

before the Tribunal u/s 166 of M.V. Act, claiming compensation, contending that, on 24.9.2009 at about 8.30 a.m. deceased was proceeding as pillion rider in two wheeler which was being ridden by her mother-2nd claimant on the left side of Bangalore-Kolar, NH 4 Road and when they came near SJES College in front of East Point College, Bidarahalli Hobli, Bangalore Taluk, at that time, the driver of the BMTC bus bearing Reg. No. KA. 05.C2174 came in a rash and negligent manner with high speed and dashed against the two wheeler. Due to which, the rider fell down on the left side and the deceased, pillion rider fell down on the right side and the bus ran over deceased and her body was damaged. Immediately, she was shifted to Bowring and Lady Curzon hospital, but on the way to hospital, she succumbed to injuries.

3. It is the further case of the claimants that, deceased was aged about 22 years, hale and healthy prior to the accident, she was a MBA student and also doing part time and earning Rs. 8,000/- per month. Due to her untimely death, claimants have lost their daughter and suffered both social and financial insecurity, apart from mental shock and agony.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs. 2,84,000/- under different heads with interest at 8% p.a., from the date of petition till the date of deposit, directing the Corporation to deposit the compensation amount with costs and interest. Being aggrieved by the said judgment and award, both the claimants and Corporation have presented these appeals seeking appropriate reliefs as stated supra.

5. We have heard the learned counsel appearing for the parties.

6. The submission of the learned counsel appearing for claimants, at the outset, is that, the Tribunal has erred in not assessing the income of the deceased reasonably and what is assessed is on lower side. To substantiate the said submission, he submitted that, deceased was aged about 22 years, she was a MBA student and also doing part time job and earning Rs. 8,000/- per month and she was a very bright student and daughter of claimant Nos. 1 and 2 and sister of claimant No. 3. But these aspects of the matter have not been considered by the Tribunal while assessing her income and therefore, the income of the deceased may be reassessed reasonably. Further, he submitted that the quantum of compensation awarded by the Tribunal towards conventional heads is on lower side and is liable to be enhanced. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be modified.

7. Per contra, learned counsel Sri. D. Vijaya Kumar, appearing for the Corporation, at the outset submitted that, the Tribunal has committed an error, much less material irregularity in issuing a direction to it to deposit the compensation amount instead of issuing a direction to the Insurer to indemnify the award amount since the vehicle was insured with the insurer. To substantiate

the said submission, he submitted that it is well settled law that, in case if the vehicle is leased in favour of Corporation there is no violation of terms and conditions of the policy and the insurance company cannot escape from liability to pay the compensation and the hirer of the vehicle is not liable to pay the compensation and therefore, there cannot be any liability on the Corporation to pay any compensation and it is only the registered owner and insurer of the hired vehicle are liable to pay the compensation, as held by the Hon''ble Apex Court in Civil Appeal No. 5901/2011 decided on 25.7.2011 in the case of UPSRTC Vs. Kulsum & others. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be set aside by setting aside the direction issued against it to deposit the compensation amount by issuing a direction to the Insurer to indemnify the award amount and the petition against the Corporation is liable to be dismissed.

8. As against this, learned counsel appearing for Insurer, inter-alia, submitted that the impugned judgment and award passed by the Tribunal is just and proper and it does not call for interference. To substantiate his submission, he submitted that, the Corporation has not made any efforts to examine neither the driver nor the employer to shows that the vehicle in question was insured with it and therefore, the Tribunal is justified in issuing a direction to the Corporation to deposit the award amount.

9. After hearing the learned counsel for the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, the points that arise for our consideration are:

(i) Whether the direction issued by the Tribunal to the Corporation to deposit the compensation amount is sustainable in law?

(ii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

Re. Point No. 1:

10. The undisputed facts of the case are, the occurrence of the accident and the resultant death of the deceased. It is also not in dispute that the vehicle was insured with the Insurer and vehicle was taken on hire/contract. Learned counsel appearing for the Insurer submitted that, the vehicle in question is insured with it, but his submission is, the Corporation has neither examined its driver nor the authorized officer to prove the same. However, he has not disputed the law laid down by the Hon''ble Apex Court in Civil Appeal No. 5901/2011 decided on 25.7.2011 in the case of UPSRTC Vs. Kulsum.''& others. Therefore, we find some substance in the submission made by the Corporation, Sri. D. Vijaya Kumar. Therefore, in the light of the above decision of the Apex Court and in view of the submission made by learned counsel appearing for the Corporation and the Insurer, the impugned judgment and award passed by the Tribunal is liable to be set aside, so far as it relates to issuing a direction to the Corporation to deposit the award amount holding that the Insurer is liable to indemnify the award

amount.

Re. Point No. 2:

11. It is not in dispute that claimants are the parents and brother of the deceased. It is case of the claimants that deceased was aged about 22 years, hale and healthy prior to the accident, she was a MBA student and also doing part time job and getting Rs. 8,000/- per month. But no credible documents are produced by the claimants to prove her income. Even they have not produced any documents to prove her qualification, except giving an oral evidence and therefore, the same cannot be accepted. Further, it emerges that, the Tribunal has assessed the income of the deceased at Rs. 3,000/- per month which is on lower side and it needs to be enhanced. Having regard to the age, occupation, qualification of the deceased and the year of accident, we re-assess her income at Rs. 5,000/- per month to meet the ends of justice and to safeguard the interest of both the parties. Out of which, if 50% (Rs. 2,500/-) is deducted towards her personal and living expenses since she was unmarried, her net monthly income comes to Rs. 2,500/-. Accepting the multiplier of "13" adopted by the Tribunal taking the age of the younger parent, mother of the deceased as just and proper, we re-determine the loss of dependency at Rs. 3,90,000/- instead of Rs. 2,34,000/- awarded by the Tribunal and accordingly, it is awarded.

12. Having regard to the facts and circumstances of the case, we award a sum of Rs. 30,000/- towards loss of love and affection at the rate of Rs. 10,000/- each, Rs. 20,000/- towards loss of estate and Rs. 20,000/- towards transportation of dead body and funeral expenses. In all, the claimants are entitled to a total compensation of Rs. 4,60,000/- instead of Rs. 2,84,000/- awarded by the Tribunal. There would be an enhancement of Rs. 1,76,000/- with interest at 8% p.a., from the date of petition till its realization.

13. For the foregoing reasons, the appeal filed by the claimants and the appeal filed by the Corporation are allowed in part.

The impugned judgment and award dated 17/05/2011 passed in MVC No. 7135/2009, by the VII Additional Judge, Court of Small Causes and Member, Motor Accident Claims Tribunal-3, Bangalore (SCCH-3), is hereby set aside so far as it relates to the direction issued by the Tribunal to the Corporation to deposit the compensation amount.

The insurer is directed to deposit the compensation awarded by the Tribunal and also the enhanced compensation of Rs. 1,76,000/- with interest at 8% p.a., from the date of petition till its realization within a period of three weeks from the date of receipt of a copy of this judgment and award.

Immediately on such deposit by the Insurer, out of the enhanced compensation of Rs. 1,76,000/-, a sum of Rs. 50,000/- each with proportionate interest shall be invested in the names of claimant Nos. 1 and 2 in any Nationalized or Scheduled Bank, for a period of 5 years and renewable by five years, with liberty

reserved to them to withdraw the interest accrued on it, periodically.

The remaining sum of Rs. 76,000/- with proportionate interest shall be released in favour of the claimant Nos. 1 and 2 in equal proportion immediately.

The Registry is directed to refund the statutory amount deposited by the Corporation, to the Corporation through his counsel, forthwith.

Draw the award, accordingly.